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8 Attorneys for Defendant  
9 INTEL CORPORATION

10  
11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION  
13

14 IN RE: HIGH-TECH EMPLOYEE  
15 ANTITRUST LITIGATION

Master Docket No. 11-CV-2509-LHK

16 THIS DOCUMENT RELATES TO:

**CORRECTED DECLARATION OF  
STEVEN M. PERRY IN SUPPORT OF  
INTEL CORPORATION'S MOTION  
FOR SUMMARY JUDGMENT**

17  
18 ALL ACTIONS

Date: March 20, 2014  
Time: 1:30 p.m.  
Courtroom of the Hon. Lucy Koh  
Courtroom 8, 4th Floor

1 I, STEVEN M. PERRY, hereby declare and say:

2 1. I am a member of Munger, Tolles & Olson LLP, counsel of record for Intel  
3 Corporation (“Intel”) in this case. I am admitted to practice before this Court. I make this  
4 declaration in support of the motion for summary judgment filed in this matter on behalf of  
5 Intel. I have personal knowledge of the matters set forth herein and could and would  
6 testify competently to each of them.

7 2. I have attached, as exhibits A through O, the evidentiary material that Intel is  
8 submitting in support of its motion for summary judgment, filed separately. These exhibits  
9 are cited in the motion with the abbreviation “IEX.” Most of the exhibits include excerpts  
10 from depositions taken in this matter. We have indicated the portions of the deposition  
11 testimony relied upon in Intel’s motion for summary judgment by highlighting the  
12 testimony. We have also included, where appropriate, a few introductory transcript pages  
13 in which the witness identifies her or his employer and job responsibility.

14 3. I have attached, as exhibit A, a true and correct copy of Plaintiffs’  
15 Supplemental Answers and Objections to Defendants’ Second Set of Interrogatories,  
16 served in this matter by plaintiffs on May 24, 2013.

17 4. I have attached, as exhibit B, a true and correct copy of Plaintiffs’ Answers  
18 and Objections to Defendants’ Second Set of Interrogatories, Number 16, served in this  
19 matter by plaintiffs on June 7, 2013.

20 5. I have attached, as exhibit C, a true and correct copy of the Declaration of  
21 Theodore A. Snyder, Ph.D., signed by Dr. Snyder. Dr. Snyder’s C.V. is attached to his  
22 declaration. Dr. Snyder submitted an expert report in this matter on behalf of Intel on  
23 November 25, 2013, as amended on December 6, 2013, and he was deposed by plaintiffs’  
24 counsel on December 7, 2013. Dr. Snyder’s declaration contains certain passages from his  
25 expert report; it does not contain any new opinions.

26 6. I have attached, as exhibit D, a true and correct copy of certain transcript  
27 excerpts from the deposition of plaintiffs’ expert, Prof. Matthew Marx, taken in this matter  
28

1 on November 15, 2013. The exhibit includes the reporter's certificate and Prof. Marx's  
2 C.V., which was marked as exhibit 1 at his deposition.

3 7. I have attached, as exhibit E, a true and correct copy of certain transcript  
4 excerpts from the deposition of Google employee Alan Eustace, taken in this matter on  
5 February 27, 2013. The submitted excerpts include the reporter's certificate and a signed  
6 errata sheet.

7 8. I have attached, as exhibit F, a true and correct copy of certain transcript  
8 excerpts from the deposition of Google employee Omid Kordestani, taken in this matter on  
9 March 11, 2013. The submitted excerpts include the reporter's certificate and a signed  
10 errata sheet.

11 9. I have attached, as exhibit G, a true and correct copy of certain transcript  
12 excerpts from the deposition of Google employee Eric Schmidt, taken in this matter on  
13 February 20, 2013. The submitted excerpts include the reporter's certificate and a signed  
14 errata sheet.

15 10. I have attached, as exhibit H, a true and correct copy of certain transcript  
16 excerpts from the deposition of Google executive Sergey Brin, taken in this matter on  
17 March 19, 2013. The submitted excerpts include the reporter's certificate.

18 11. I have attached, as exhibit I, a true and correct copy of certain transcript  
19 excerpts from the deposition of Paul Otellini, taken in this matter on January 29, 2013.  
20 Mr. Otellini was Intel's CEO as of the date of the deposition. The excerpts include the  
21 reporter's certificate and a signed errata sheet.

22 12. I have attached, as exhibit J, a true and correct copy of certain transcript  
23 excerpts from the deposition of Intel employee Renee James, taken in this matter on  
24 March 22, 2013. The excerpts include the reporter's certificate and a signed errata sheet.

25 13. I have attached, as exhibit K, a true and correct copy of certain transcript  
26 excerpts from the deposition of Intel employee Deborah Conrad, taken in this matter on  
27 November 21, 2012. The excerpts include the reporter's certificate and a signed errata  
28 sheet.



# EXHIBIT A

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*Co-Lead Counsel for Plaintiff Class*

[Additional counsel listed on signature page]

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE  
ANTITRUST LITIGATION  
THIS DOCUMENT RELATES TO:  
ALL ACTIONS,

Master Docket No. 11-CV-2509-LHK

**PLAINTIFFS' SUPPLEMENTAL  
ANSWERS AND OBJECTIONS TO  
DEFENDANTS' SECOND SET OF  
INTERROGATORIES**

**PROPOUNDING PARTY:** Defendants

**RESPONDING PARTY:** Plaintiffs

**SET NUMBER:** Second

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Northern District of California, Plaintiffs respond to Defendants' Second Set Interrogatories, served on February 28, 2013, as follows:

**PRELIMINARY STATEMENT**

The Answers set forth below are limited by agreement between Plaintiffs' Counsel and Defendants' Counsel. In consideration of the fact that substantial discovery (including depositions and production of documents by Defendants) has taken place recently, and in light of the procedural posture of this case, the parties through their counsel have agreed that Plaintiffs at this time shall identify the alleged agreements at issue and certain information about them. The parties agreed Plaintiffs would supplement their initial response to Interrogatory No. 15 on May 24, 2013, and that Plaintiffs' response to Interrogatory No. 16 shall be provided to Defendants on June 7, 2013. Plaintiffs continue to reserve all of their rights to object and respond to any Interrogatories or portions of Interrogatories not addressed herein. Plaintiffs' investigation and discovery in this matter is not complete. Plaintiffs reserve the right to amend, alter, supplement, modify, or otherwise revise these Answers and Objections.

Plaintiffs further state that these Answers contain references to material that certain Defendants have designated as "CONFIDENTIAL - ATTORNEYS' EYES ONLY" under the Protective Order governing this case. Without conceding the validity of any such designations and reserving all rights to challenge them, Plaintiffs accordingly designate these Answers and Objections as "CONFIDENTIAL – ATTORNEYS' EYES ONLY."

**GENERAL OBJECTIONS**

The following General Objections apply to each and every applicable Interrogatory, and are incorporated by reference into each and every applicable Answer as if set forth in full in each Response.

1. Plaintiffs object to the Interrogatories to the extent they call for information protected by the attorney-client privilege, the work product doctrine, or any other common law privilege or protection that may attach to information requested by the interrogatory.

2. In responding to the Interrogatories, Plaintiffs do not adopt, embrace, or accept any term or definition employed by Defendants. These responses are made based upon Plaintiffs' interpretation of words contained in the Interrogatory, unless a specific definition or instruction has been agreed upon.

3. Plaintiffs object to the Interrogatories to the extent they are premature contention interrogatories.

Subject to, and without waiving, any of the foregoing objections, Plaintiffs respond as follows:

**ANSWERS AND SPECIFIC OBJECTIONS**

**INTERROGATORY NO. 15:**

Separately for each agreement (whether bilateral, multilateral or otherwise) that You contend any Defendant entered into and for which You seek damages in this case, describe in as much detail as possible the circumstances of the agreement including without limitation the time periods during which it was in effect, the names of the Persons who entered into it, the Persons who were parties to it, and its terms.

**ANSWER TO INTERROGATORY NO. 15:**

Plaintiffs object to Interrogatory No. 15 to the extent that it impermissibly seeks the premature disclosure of information that will be the subject of expert reports and testimony. Such expert opinion will be disclosed in accordance with the Orders of the Court and the applicable Rules of Civil Procedure. Plaintiffs further object that this is a premature contention interrogatory. Plaintiffs continue to reserve all rights to amend or supplement the answer accordingly as they analyze subsequently obtained evidence.

Subject to and without waiving any of the general or specific objections, Plaintiffs respond to Interrogatory No. 15 as follows:

Defendants Adobe Systems, Inc., Apple Inc., Google Inc., Intel Corp., Intuit Inc., Lucasfilm Ltd., and Pixar participated in a conscious scheme designed to achieve an unlawful objective (the “conspiracy”). This included, but is not limited to, a web of interconnected understandings, agreements, and mutual assurances between and among Defendants Adobe, Apple, Google, Intel, Intuit, Lucasfilm, and Pixar over a number of years, including 2005-2009, with the purpose and effect of restricting employee recruiting and hiring practices; reducing competition for employees and labor; diminishing employment opportunities and interfering in the price-setting mechanism that otherwise would have prevailed; and reducing, suppressing and



1 stabilizing wages and other compensation to the members of the Class.

2 Defendants' understandings, agreements, and mutual assurances included express  
3 agreements not to compete for each other's employees ("anti-solicitation agreements"). The anti-  
4 solicitation agreements prohibited recruitment of employees unless the employee first  
5 affirmatively requested consideration. The anti-solicitation agreements often went substantially  
6 further and became effectively no-hire agreements, or no-hire without permission. The  
7 Defendants' understandings, agreements, and mutual assurances to restrict the recruitment and  
8 hiring of each other's employees are evidenced by a series of explicit communications between  
9 and among Defendants, had common (if not identical) material terms and features, and together  
10 had a common economic impact to the detriment of Defendants' employees.

11 All of Defendants' employees were subject to Defendants' scheme, as the understandings,  
12 agreements, and mutual assurances were unlimited in scope by geography, job, function, or time  
13 period. The prohibitions also applied to all subsidiaries of Defendants. Defendants' agreements  
14 were naked restraints of trade that were not tailored, necessary, or ancillary to any legitimate  
15 cooperation or collaboration between or among the Defendants, and were without legitimate  
16 procompetitive justification.

17 After entering into anti-solicitation agreements, Defendants' senior executives  
18 implemented them throughout their respective companies (and third party recruiters working on  
19 Defendants' behalf), and policed each other's adherence to them. Violations and suspected  
20 violations were reported by Defendants' senior executives, who then took immediate steps to  
21 address the violations or suspected violations and ensure that the violations would not be  
22 repeated.

23 Further, the Defendant co-conspirators agreed to conceal the existence, nature, and scope  
24 of their scheme and took affirmative steps to do so. The agreements continued at least until  
25 Defendants received Civil Investigative Demands from the United States Department of Justice,  
26 and continued no later than September 24, 2010, the date of the consent decree.

27 **Beginning of the Conspiracy: Lucasfilm and Pixar.**

28 The conspiracy began in the mid 1980's, shortly after Steve Jobs purchased the entity

1 from Lucasfilm that became Pixar. George Lucas and Ed Catmull agreed that Lucasfilm and  
2 Pixar would not compete for each other's employees. Mr. Lucas and Mr. Catmull agreed that:  
3 neither company would solicit the other's employees; the companies would take affirmative steps  
4 to avoid bidding wars for employees that would result in increasing each other's pay structure  
5 (this would later be formalized into an express agreement not to counter-offer above the other  
6 companies' original offer); and the companies would notify the other in cases when an employee  
7 actively sought to work for the other. With respect to the notification provision, a candidate of  
8 one company applying to the other company would be instructed to inform his or her current  
9 manager that he or she was seeking employment with the other company. The company  
10 considering the other's employee as a job candidate was to call the candidate's present company  
11 upon receipt of the candidate's application, and again in the event that it chose to extend a job  
12 offer, even if the candidate applied for a job on his or her own initiative. Mr. Lucas and Mr.  
13 Catmull directed their respective and relevant senior executives to implement and enforce the  
14 anti-solicitation agreement, including Lori McAdams, Sharon Coker, Jim Morris, and Micheline  
15 Chau.

16 **Steve Jobs and Apple.**

17 The best evidence available shows that, no later than January 2004, the conspiracy  
18 expanded to include Apple. Pixar and Apple agreed not to solicit employees of the other  
19 company, and, in any case, Pixar could not hire any Apple employee without Steve Jobs'  
20 approval. The agreement was subsequently re-affirmed by Lori McAdams and Danielle Lambert,  
21 among others. The anti-solicitation agreement between Pixar and Apple was expressly designed  
22 to mimic the anti-solicitation agreement between Pixar and Lucasfilm.

23 **Conspiracy Expands to Include Google and Intel.**

24 In February 2005, an "irate" Steve Jobs called Sergey Brin of Google to demand that  
25 Google and Apple agree not to compete for each other's employees, and to demand that Google  
26 immediately withdraw pending offers of employment to Apple employees. Steve Jobs threatened  
27 that, if Google did not agree, there would be "war" between the companies. Google agreed to  
28 Steve Jobs' demands. The individuals who participated in forming and approving the agreement

1 between Google and Apple included: Steve Jobs, members of Google's Executive Management  
2 Group (including Sergey Brin, Larry Page, Eric Schmidt, and others), and Bill Campbell.

3 Members of Google's Board of Directors, including Intel's CEO Paul Otellini, were  
4 informed of and approved Google's decision to enter into an anti-solicitation agreement with  
5 Apple. At the same time (February 2005), Google placed Intel on its Do Not Call List. In an  
6 email to Eric Schmidt in May 2006, Paul Otellini confirmed that a "no recruiting agreement"  
7 existed between Intel and Google, and sought to ensure that Google was enforcing it. In June 07,  
8 Eric Schmidt confirmed in an email to Paul Otellini that Intel had been on Google's "Do Not Call  
9 List since the policy was created" (February 2005). In September 2007, Paul Otellini referred to  
10 the agreement between the companies as a "handshake 'no recruit' between Eric [Schmidt] and  
11 myself. I would not like this broadly known." The individuals who participated in forming and  
12 approving the agreement between Google and Intel included Eric Schmidt and Paul Otellini.

13 **Adobe.**

14 Three months after Steve Jobs succeeded in reaching an anti-solicitation agreement with  
15 Google, he applied similar tactics with Adobe to induce it into entering into an identical  
16 agreement with Apple. By no later than May 27, 2005, Adobe and Apple agreed not to solicit any  
17 employees of the other. As implemented, the agreement also prevented the hiring of each other's  
18 employees. The agreement was made between Steve Jobs and Bruce Chizen, and was  
19 implemented by Shantanu Narayen, Danielle Lambert, Theresa Townsley, and Donna Morris,  
20 among others.

21 **Intuit.**

22 After participating in the formation and implementation of the anti-solicitation agreements  
23 among Apple, Google, and Intel, Bill Campbell insisted that Google and Intuit agree to an  
24 identical agreement. No later than June 2007, Google and Intuit agreed to an anti-solicitation  
25 agreement. The agreement was made among Bill Campbell, Eric Schmidt, and Shona Brown.

26 **INTERROGATORY NO. 16:**

27 Separately for each agreement identified in response to Interrogatory No. 15, state all facts  
28 that support Your contention that the agreement existed and was unlawful, including, without

1 limitation, identifying supporting Documents.

2 **ANSWER TO INTERROGATORY NO. 16:**

3 Plaintiffs object to Interrogatory No. 16 as a premature contention interrogatory.

4 Plaintiffs also object to this Interrogatory to the extent that it calls for information  
5 protected by the attorney-client privilege and/or the work-product doctrine. Plaintiff further  
6 objects to the extent the information requested will be the subject of expert reports and testimony.  
7 Such expert opinion will be disclosed in accordance with the Orders of the Court and the  
8 applicable Rules of Civil Procedure. Plaintiffs further object to the extent that such “facts” are in  
9 Defendants’ possession and have not yet been produced or otherwise discovered in this case.

10 Pursuant to discussions between Plaintiffs’ counsel and Defendants’ counsel, Plaintiffs  
11 shall provide a response to this Interrogatory to Defendants by June 7, 2013.

1 Dated: May 24, 2013

JOSEPH SAVERI LAW FIRM

2  
3 By: /s/ Joseph R. Saveri

4  
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16 Brendan P. Glackin (State Bar No. 199643)  
17 Dean M. Harvey (State Bar No. 250298)  
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*Class Counsel*

# EXHIBIT B

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*Co-Lead Counsel for Plaintiff Class*

[Additional counsel listed on signature page]

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE  
 ANTITRUST LITIGATION  
 THIS DOCUMENT RELATES TO:  
 ALL ACTIONS,

Master Docket No. 11-CV-2509-LHK

**PLAINTIFFS' ANSWERS AND  
 OBJECTIONS TO DEFENDANTS'  
 SECOND SET OF INTERROGATORIES,  
 NUMBER 16**

**PROPOUNDING PARTY:** Defendants

**RESPONDING PARTY:** Plaintiffs

**SET NUMBER:** Second, Number 16

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Northern District of California, Plaintiffs respond to Defendants' Second Set Interrogatories, Number 16, served on February 28, 2013, as follows:

**PRELIMINARY STATEMENT**

These Answers contain references to material that certain Defendants have designated as “CONFIDENTIAL - ATTORNEYS’ EYES ONLY” under the Protective Order governing this case. Without conceding the validity of any such designations and reserving all rights to challenge them, Plaintiffs accordingly designate these Answers and Objections as “CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

**GENERAL OBJECTIONS**

The following General Objections apply to each and every applicable Interrogatory, and are incorporated by reference into each and every applicable Answer as if set forth in full in each Response.

1. Plaintiffs object to the Interrogatories to the extent they call for information protected by the attorney-client privilege, the work product doctrine, or any other common law privilege or protection that may attach to information requested by the interrogatory.

2. In responding to the Interrogatories, Plaintiffs do not adopt, embrace, or accept any term or definition employed by Defendants. These responses are made based upon Plaintiffs’ interpretation of words contained in the Interrogatory, unless a specific definition or instruction has been agreed upon.

3. Plaintiffs object to the Interrogatories to the extent they are premature contention interrogatories under the framework set forth in *In re Convergent Technologies Securities Litigation*, 108 F.R.D. 328 (N.D. Cal. 1985). At this stage in the litigation, Plaintiffs’ responses to Defendants’ contention-style Interrogatories would not “contribute meaningfully” to: (1) clarifying the issues in the case; (2) narrowing the scope of the dispute; (3) setting up early settlement discussion; or (4) exposing a substantial basis for a motion under Rule 11 or Rule 56. *Id.* at 338-39.

Subject to, and without waiving, any of the foregoing objections, Plaintiffs respond as follows:



**ANSWERS AND SPECIFIC OBJECTIONS**

**INTERROGATORY NO. 16:**

Separately for each agreement identified in response to Interrogatory No. 15, state all facts that support Your contention that the agreement existed and was unlawful, including, without limitation, identifying supporting Documents.

**ANSWER TO INTERROGATORY NO. 16:**

Plaintiffs object to Interrogatory No. 16 as a premature contention interrogatory. Plaintiffs object to this Interrogatory to the extent that it calls for information protected by the attorney-client privilege and/or the work-product doctrine. Plaintiffs further object to the extent the information requested will be the subject of expert reports and testimony. Such expert opinion will be disclosed in accordance with the Orders of the Court and the applicable Rules of Civil Procedure. Plaintiffs object to the extent that such “facts” are in Defendants’ possession and have not yet been produced or otherwise discovered in this case. Plaintiffs object that this Interrogatory is burdensome and oppressive in that it explicitly seeks cumulative facts; these Responses are not intended to be exhaustive of every shred of evidence supporting the same agreements and their unlawfulness.

Subject to and without waiving any of the general or specific objections, Plaintiffs respond to Interrogatory No. 16 as follows:

Plaintiffs incorporate by reference the response to the preceding Interrogatory No. 15.

The existence of Defendants’ understandings, agreements, and mutual assurances to restrict the recruitment and hiring of each other’s employees are evidenced by a series of explicit communications between and among Defendants regarding their formation, terms, implementation, and enforcement, according to the direct deposition testimony of Mark Bentley, George Lucas, Ed Catmull, Micheline Chau, Lori McAdams, Jan van der Voort, Pamela Zissimos, Sharon Coker, Jim Morris, and Danielle Lambert (Lucasfilm and Pixar, and Pixar and Apple); Laszlo Bock, Sergey Brin, Shona Brown, Alan Eustace, Patrick Flynn, Arnon Geshuri, Renee James, Larry Page, Eric Schmidt, Bill Campbell, Paul Otellini, Jonathan Rosenberg, and Frank Wagner (Intel and Google); David Alvarez, Rich Bechtel, Mark Bentley, Patrick Burke,

1 Darrin Baja, Bruce Chizen, Kim Hoffman, Natalie Kessler, Danielle Lambert, Donna Morris,  
 2 Shantanu Narayen, Ron Okamoto, Jerry Sastri and Jeff Vjungco (Apple and Adobe); David  
 3 Alvarez, Darrin Baja, Alan Eustace, Tony Fadell, Eric Schmidt, Arnnon Geshuri, Shona Brown,  
 4 Larry Page, Sergey Brin, Patrick Flynn, Frank Wagner, Danielle Lambert, Patrick Burke, Mark  
 5 Bentley, Omid Kordestani, Ron Okamoto, Ann Reeves, Jonathan Rosenberg, and Rich Bechtel  
 6 (Apple and Google); and Laszlo Bock, Shona Brown, Bill Campbell, Scott Cook, Arnnon  
 7 Geshuri, Larry Page, Jonathan Rosenberg, Eric Schmidt, Mason Stubblefield, and Sherry  
 8 Whiteley (Intuit and Google).

9 The existence of Defendants' understandings, agreements, and mutual assurances to  
 10 restrict the recruitment and hiring of each other's employees are evidenced by the following  
 11 documents reflecting explicit communications between or among Defendants, and by testimony  
 12 of the above witnesses about these documents: Plaintiffs' Deposition Exhibit Nos. 127, 128, 129,  
 13 130, 131, 132, 137, 142, 143, 144, 145, 146, 151, 152, 154, 155, 158, 159, 160, 164, 165, 326,  
 14 327, 328, 329, 330, 331, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 358,  
 15 363, 364, 367, 376, 438, 439, 446, 691, 692, 693, 694, 695, 696, 697, 700, 701, 702, 703, 704,  
 16 705, 706, 707, 708, 1729, 1735, 1736, 1968, 1969, 1970, 1971, 1978, 1980, 2435, and 2436  
 17 (Pixar and Lucasfilm); 133, 134, 136, 138, 139, 140, 146, 154, 161, 162, 243, 258, 368, 369, 370,  
 18 371, 372, 376, 419, 420, 421, 424, 446, 669, 1351, 1366, 1374, and 1677 (Pixar and Apple); 176,  
 19 177, 178, 179, 180, 181, 182, 183, 184, 185, 194, 201, 202, 206, 207, 208, 209, 387, 388, 451,  
 20 452, 454, 455, 458, 459, 460, 462, 553, 555, 556, 561, 566, 637, 640, 643, 648, 649, 651, 656,  
 21 661, 666, 783, 864, 865, 872, 1049, 1054, 1737, 1740, 1741, 2345, 2346, 2347, 2429, 2431, 2688,  
 22 2791, and 2794 (Intel and Google); 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234,  
 23 235, 236, 241, 242, 243, 244, 245, 246, 247, 248, 265, 266, 286, 288, 289, 290, 291, 292, 294,  
 24 295, 296, 298, 669, 679, 921, 1024, 1039, 1043, 1132, 1133, 1134, 1145, 1146, 1149, 1151, 1152,  
 25 1153, 1204, 1205, 1222, 1351, 1358, 1359, 1360, 1366, 1374, 1663, 1665, 1667, 1675, 1677,  
 26 1694, 1695, 1696, 1697, 1698, 1699, 1803, 1804, 1805, 1806, 1808, 1809, 1810, 1811, 1812,  
 27 1814, 1815, 2309, 2310, 2311, 2312, 2315, 2316, 2537, 2540, 2542, 2546, 2594, 2597, 2786, and  
 28 2827 (Apple and Adobe); 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189,

190, 191, 192, 194, 199, 206, 207, 208, 209, 241, 242, 243, 245, 249, 250, 251, 252, 253, 254, 256, 265, 274, 277, 278, 279, 553, 555, 556, 557, 559, 560, 561, 563, 565, 566, 573, 637, 640, 643, 649, 650, 653, 656, 661, 666, 669, 864, 865, 872, 1015, 1039, 1043, 1049, 1050, 1051, 1054, 1204, 1205, 1210, 1222, 1351, 1359, 1360, 1366, 1373, 1374, 1665, 1668, 1669, 1674, 1675, 1677, 1737, 1740, 1741, 1754, 1755, 1870, 1871, 1872, 1875, 1876, 1989, 2003, 2004, 2005, 2262, 2265, 2431, 2537, 2543, 2544, 2545, 2546, 2547, 2548, 2688, 2786, 2791, 2794, 2795, 2827, and 281A (Apple and Google); and 176, 182, 183, 184, 185, 193, 194, 195, 196, 197, 198, 206, 207, 208, 209, 553, 555, 556, 575, 586, 597, 629, 637, 640, 642, 643, 648, 649, 656, 661, 664, 666, 753, 754, 864, 865, 872, 921, 925, 1049, 1054, 1737, 1740, 1741, 1745, 1759, 2431, 2432, 2433, 2685, 2791, and 2794 (Intuit and Google).

The documents and deposition testimony identified herein also demonstrate and prove the participation of all Defendants with each other in a conscious scheme designed to achieve an unlawful objective.

Defendants compete for employees. The existence of the agreements establishes their unlawfulness *per se*. All of Defendants' employees were subject to Defendants' scheme, as the understandings, agreements, and mutual assurances were unlimited in scope by geography, job, function, or time period. The prohibitions also applied to all subsidiaries of Defendants. Defendants' agreements were naked restraints of trade that were not tailored, necessary, ancillary, or in any way related to any legitimate cooperation or collaboration between or among the Defendants, and were without legitimate procompetitive justification. *See* DOJ Competitive Impact Statement at 3, *United States v. Adobe Systems Inc., et al.*, No. 10-cv-1629-RBW (D.D.C. Sept. 24, 2010) (regarding agreements among all defendants but Lucasfilm) (finding that the agreements are "*per se* unlawful" under Section One and "facially anticompetitive because they eliminated a significant form of competition to attract high-tech employees, and, overall, substantially diminished competition to the detriment of the affected employees who were likely deprived of competitively important information and access to better job opportunities." *See also* DOJ Competitive Impact Statement at 8, *United States v. Lucasfilm LTD.*, No. 10-cv-2220-RBW (D.D.C. Dec. 21, 2010) (regarding agreements between Lucasfilm and Pixar).

1 Dated: June 7, 2013

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2  
3 By: /s/ Joseph R. Saveri

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**CERTIFICATE OF SERVICE**

I am over 18 years of age and not a party to this action. I am readily familiar with Lief Cabraser Heimann & Bernstein's practice for collection and processing of documents for collection and processing of documents for service via e-mail, and that practice is that the documents are attached to an e-mail and sent to the recipient's e-mail account the same day as the date listed on this Certificate of Service.

My business address is 275 Battery Street, 29<sup>th</sup> Floor, San Francisco, CA 94111. On June 7, 2013, I served a true and correct copy of the within documents:

1. PLAINTIFFS' ANSWERS AND OBJECTIONS TO DEFENDANTS' SECOND SET OF INTERROGATORIES, NUMBER 16; and this
2. CERTIFICATE OF SERVICE

by email addressed as follows:

Robert A. Mittelstaedt Craig A. Waldman David Kiernan JONES DAY 555 California Street, 26th Floor San Francisco, CA 94104 <a href="mailto:ramittelstaedt@jonesday.com">ramittelstaedt@jonesday.com</a> <a href="mailto:cwaldman@jonesday.com">cwaldman@jonesday.com</a> <a href="mailto:dkiernan@jonesday.com">dkiernan@jonesday.com</a> Tel.: (415) 626-3939 Fax: (415) 875-5700  Counsel for Defendant <b>Adobe Systems Inc.</b>	George Riley Michael F. Tubach Lisa Chen Christina J. Brown O'MELVENY & MYERS LLP Two Embarcadero Center, 28th Floor San Francisco, CA 94111 <a href="mailto:griley@omm.com">griley@omm.com</a> <a href="mailto:mtubach@omm.com">mtubach@omm.com</a> <a href="mailto:lisachen@omm.com">lisachen@omm.com</a> <a href="mailto:cjbrown@omm.com">cjbrown@omm.com</a> Tel.: (415) 984-8700 Fax: (415) 984-8701  Counsel for Defendant <b>Apple Inc.</b>
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Counsel for Defendant **Pixar**

Dated: June 7, 2013

Respectfully submitted,

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

By: /Anne B. Shaver

# EXHIBIT C



**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN JOSE DIVISION**

IN RE HIGH-TECH EMPLOYEE  
ANTITRUST LITIGATION

**Master Docket No. 11-CV-2509-LHK**

THIS DOCUMENT RELATES TO:  
  
ALL ACTIONS

**DECLARATION OF EDWARD A. SNYDER, PH.D.**

**January 8, 2013**

**DECLARATION OF EDWARD A. SNYDER, Ph.D.**

I, Edward A. Snyder, Ph.D., hereby declare:

1. I am Dean of the Yale School of Management and the William S. Beinecke Professor of Economics and Management. I assumed this position on July 1, 2011. From July 1, 2001 until June 30, 2010, I was the George Shultz Professor of Economics at the University of Chicago Booth School of Business and served as Dean of the School. I have personal knowledge of the matters set forth in this declaration.

2. I began my professional career in July 1978 with the Antitrust Division of the U.S. Department of Justice as a Staff Economist to the National Commission to Review Antitrust Laws and Procedures. I worked as a Staff Economist in the Antitrust Division on a full- and part-time basis until 1984, working on antitrust investigations in a wide range of product markets involving manufacturers, service providers, distributors, and retailers. Since then I have worked in antitrust enforcement, conducted research on antitrust policy and business practices, taught courses in related areas, and consulted on antitrust matters.

3. I earned my M.A. in Public Policy and Ph.D. in Economics from the University of Chicago. My Ph.D. thesis focused on price fixing and examined enforcement of Section 1 of the Sherman Act by the U.S. Department of Justice; this involved reviewing over 200 price-fixing conspiracies. I began my academic career in 1982 at the University of Michigan Business School and over time was promoted to Professor of Business Economics and Public Policy. My primary expertise is Industrial Organization, which is the field of economics that deals most directly with pricing and distribution of products, the interactions among competitors, contracting practices, and

antitrust issues. My research draws on relevant theory, investigates real-world behavior, and is predominantly empirical in nature. I have conducted three scholarly projects on antitrust policy and enforcement with Thomas E. Kauper, Professor of Law at the University of Michigan Law School and former Assistant Attorney General in charge of the Antitrust Division, U.S. Department of Justice. I have been an editor of the *Journal of Law and Economics*.

4. I have analyzed economic and business issues in a rich variety of settings. I consider myself to be an expert on pricing practices, distribution of products, vertical integration and contracting, and industrial organization in general. I also consider myself to be an expert on allegations of price fixing and collusive agreements, monopolization, and other anti-competitive practices.

5. Attached hereto as Exhibit A is a true and correct copy of my curriculum vitae.

6. I understand that plaintiffs in this action allege that the defendants—Adobe, Apple, Google, Intel, Intuit, Lucasfilm, and Pixar—conspired to fix and suppress employee compensation by entering into certain agreements between pairs of Defendants that prohibited cold calling of each party’s employees by the other party (“no-cold-calling” or “NCC” agreements). I further understand that plaintiffs allege that one of these agreements was between Google and Intel.

7. As I stated in the expert report that I submitted in this matter on November 25, 2013, I understand that the parties have different recollections regarding the timing, scope, and terms of the Google-Intel Agreement. For the purpose of the analysis in my report and in this declaration, I have assumed as true Plaintiffs’ allegation that the

Google-Intel Agreement prohibited Google and Intel from cold calling the other's employees. (Report ¶ 12.) As I also stated in my expert report, I understand that Google and Intel engaged in extensive collaborations over at least the period 2003 through 2013. (Report ¶ 65.)

8. As set out in my expert report (and as quoted verbatim from it except as otherwise indicated with brackets or ellipses), it is my opinion that:

a. “[T]he Google-Intel Agreement was in Intel’s individual self-interest independent of the alleged overarching conspiracy and the other five NCC agreements. The Agreement supported Google and Intel’s collaborations whether or not the other Defendants were cold calling each other’s employees.” (Report ¶ 29.)

b. “Collaboration between firms is prevalent in the high technology industry and is an important strategy for competing with other high technology firms in the face of rapid technological change. Collaboration allows firms with complementary resources to leverage each other’s strengths and increase the speed of innovation while also sharing the associated costs and risks. ... Firms that work together can innovate and produce better products more efficiently than they would absent collaboration.” (Report ¶ 57.)

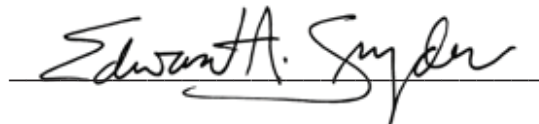
c. “Collaborations involve costs, may result in failures, and also entail risks. One risk is the loss of human capital and intellectual property that stems from collaborators’ poaching of each other’s employees. Collaborators are better able to identify the most valuable employees at the other firm in the course of collaborating and may attempt to hire them away.” (Report ¶ 58.)

d. “Given the benefits and costs to collaboration, decisions whether to collaborate are influenced by a wide range of factors, including the risks described above. As the risk associated with collaboration increases, firms will lower their level of collaboration, all else equal. Consequently, firms look for ways to reduce the risks of collaboration, for example, by entering into agreements not to cold call each other’s employees.” (Report ¶ 62.)

e. “The Google-Intel Agreement, as I have assumed it, prohibited cold calling of Google and Intel employees, and so partially protected both parties from additional poaching of their employees beyond that described [elsewhere in my report].” (Report ¶ 70.)

f. “The Agreement fostered Google and Intel’s collaborations whether or not the other Defendants were cold calling each other’s employees.” (Report ¶ 80.) “[T]he Google-Intel Agreement was [therefore] in Intel’s individual self-interest independent of the other five NCC agreements ....” (Report ¶ 81.)

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 8<sup>th</sup> day of January, 2014, at New Haven, Connecticut.

A handwritten signature in black ink, reading "Edward A. Snyder", written over a horizontal line.

Edward A. Snyder, Ph.D.

**EXHIBIT A**

**EDWARD A. SNYDER**

Curriculum Vitae

CONTACT INFORMATION:

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165 Whitney Avenue  
New Haven, CT 06520

office tel.: 203-432-6037

website: [edwardasnyder.com](http://edwardasnyder.com)

EDUCATION

B.A., Colby College, 1975 (Economics, Government)

M.A., University of Chicago, 1978 (Public Policy)

Ph.D., University of Chicago, 1984 (Economics)

POSITION (July 1, 2011 to Present)

**Yale School of Management, Yale University**

Dean and William S. Beinecke Professor of Economics and Management

*Major research interests:* Industrial Organization, Antitrust Economics, Law and Economics, Financial Institutions.

*Decanal Responsibilities:*

Overall academic, financial, and administrative leadership of Yale School of Management.

Member of the Yale University Cabinet.

Member of three-person Senior Advisory Board overseeing Yale Entrepreneurial Institute.

Member of the Yale School of Management Board of Advisors.

Member of Yale SOM's Appointments, Curriculum, and Strategy Committee.

Chair, Steering Committee, Global Network for Advanced Management.

*Teaching responsibilities:* Analysis of Global Competition Law” (co-taught with Pierre Cremieux and Fiona Scott Morton).

*Major achievements and initiatives:*

- Introduction of new Leadership Development Program in school’s three Masters-level programs.
- Conception and development of the Global Network for Advanced Management, a network of 25 top business schools, and related programs.
- Conception and introduction of the Master of Advanced Management – a new, one-year degree program, post-MBA, for students from the Global Network for Advanced Management.
- Establishment of the Initiative for Organizational Performance
- Development and introduction of Foundational Courses for Yale Master-level students

## PREVIOUS APPOINTMENTS

### **University of Chicago, Booth School of Business**

Dean, University of Chicago Booth School of Business (July 1, 2001 to June 30, 2010); George Shultz Professor of Economics (July 1, 2001 to June 30, 2011).

*Decanal Responsibilities:* Overall academic, financial, and administrative leadership of the school.

*Teaching responsibilities:* Economic Analysis of Major Policy Issues (co-taught with Gary S. Becker and Kevin M. Murphy).

*Editor:* Journal of Law & Economics (2002 – 2009)

*Major achievements and initiatives:*

- Dramatic increases in the number of endowed faculty professorships, endowed faculty fellowships, and the endowments in research and teaching centers.
- Nine years of 17.1% annual growth of MBA scholarship support.
- Naming of the school with unrestricted funds provided by David Booth – the largest gift (\$300m) to the University of Chicago and the largest gift ever to a business school.
- Increased the school’s endowment from approximately \$200m in 2001 to over \$500m, independent of the Booth gift.
- Substantial improvements in the influence, visibility, and recognition of the school, including improved rankings, e.g., BusinessWeek #1 rankings in 2006, 2008, and 2010, and Economist #1 rankings in 2006 and 2009.
- Improvements in the quality and diversity of the MBA classes.
- Large increases in support for PhD students, including dramatic increases in endowment for PhD program.
- Established the Global Advisory Board, with Councils for Asia; the Americas; and Europe, Middle East, and Africa.
- Oversaw the launch of the Initiative on Chicago Price Theory, which became the Becker Center.
- Developed funding for the Fama-Miller Center.
- Successfully moved the School’s Europe Campus from Barcelona to London.
- Moved into the school’s new campus (Harper Center) in Hyde Park on time and on budget.

- Developed first-of-kind positioning advertising campaign by a business school.
- Appointments of two women to decanal positions.
- Elimination of debt on three facilities.
- Cumulative operating surpluses of \$100.4m over nine-year period.

*Service to the University:*

- Member, Academic Leadership Group, July 2001 – June 2010
- Oversight Responsibilities for two University Centers (Stigler Center and Becker Center)
- Member, Provost Ad Hoc Tenure Review Committees, 2002 – 2010
- Member, Board of Directors, Argonne National Laboratories, July 2008 – June 2010
- Member of various Dean and VP Search Committees, 2003 – 2009
- Advisory work on University's globalization efforts, 2007 - 2010
- Member, Social Sciences Deans Group, 2009 – 2010

**University of Virginia**

Dean and Charles C. Abbott Professor of Business Administration (July 1998 – June 2001)

*Decanal Responsibilities:* Overall academic, financial, and administrative leadership of the Darden School.

*Major achievements and initiatives:*

- First MBA Program growth in 24 years.
- Increase in nine-year capital campaign from \$98m to \$212m.
- Established Financial Self-Sufficiency for the Darden School, eliminating reliance on unrestricted state support.
- Initiated Phase II of new Darden Grounds.
- Increased diversity of MBA classes.
- Appointments of two women to decanal positions.
- Appointments of two African-Americans to faculty positions.
- Innovative programs on e-business with global partners.
- Established program partnerships with University of Michigan and University of California at Berkeley.

**University of Michigan**

Senior Associate Dean, University of Michigan Business School (1995-1998)

*Responsibilities:* MBA Programs (full-time, evening, global); BBA Program, and Masters of Accounting Program. Managed many of the School's international programs and corporate relationships. Oversight of Admissions & Student Services and the Office of Career Development. Significant responsibility for faculty recruitment and development. Member of School's Executive Committee.

*Major achievements and initiatives:*

- Global initiatives including International Multi-disciplinary Action Program (IMAP) and Brazil node of Global MBA program.
- Integration of admissions and career development functions.
- Rationalization of real estate curriculum.

Director, Davidson Institute at the University of Michigan Business School (1992-1995)



*Responsibilities:* Executive and academic leadership to establish a legally-independent Institute focused on business and public policy issues in transition economies and emerging markets.

*Major achievements and initiatives:*

- Developed corporate relationships in China, Central Europe, India, and Russia, and with U.S. firms committed to operating in transition economies.
- Major research initiative on bank privatization in Central Europe and Russia.
- Design and development of in-company projects involving teams of Master's level students working in transition economies.
- Design and delivery of executive education programs for managers from transition economies.
- Progressive increases in outside funding contributing to a \$3m quasi-endowment for the Institute.

Chair, Business Economics and Public Policy (1992-1995)

*Responsibilities:* Curriculum and staffing of BBA and MBA courses. Faculty development of group of 11 faculty members specializing in business economics.

Faculty Member (1982-1994)

*Responsibilities:* MBA Core course coordinator of *Applied Microeconomics* (four years). Design and development of *Competitive Tactics*, a course analyzing competition and cooperation among firms; marketing and distribution of products; and related antitrust issues.

Member, Board of Directors, Davidson Institute (focusing on transition economies and emerging markets) (1995-1998)

Member, Executive Committee, Tauber Manufacturing Institute, University of Michigan (1996-1998)

Member, Executive Committee, Erb Institute (focusing on environmental management), University of Michigan (1996-1998)

Research Consultant, Federal Home Loan Bank Bd. / U.S. Sen. Comm. on Banking (1989).

Consultant, Antitrust Division, U.S. Department of Justice (1982-1985)

## **University of Chicago**

John M. Olin Visiting Associate Professor, Center for the Study of the Economy and the State (1991-1992)

## **Antitrust Division, U.S. Department of Justice**

Economist (1978-1982)

Staff Economist, National Commission to Review Antitrust Laws and Procedures (1978-1979)

## PUBLICATIONS

### Articles in Journals:

- “Proof of Common Impact in Antitrust Litigation: The Value of Regression Analysis”, (Co-authors: Pierre Cremieux and Ian Simmons), The George Mason Law Review, Summer 2010, pp. 939-967.
- “Bank Privatization in Transitional Economics: A General Framework with Application to Hungary’s Magyar Kulkereskedelmi Bank Transaction”, (Co-authors: Karen Schnatterly, Roger C. Kormendi and Christopher Jereb), The Financier, vol. 5, No. 2 & 3 (1998), pp. 6-23.
- “Allocation of Litigation Costs--American and English Rules,” (Co-author: James W. Hughes) in The New Palgrave Dictionary of Economics and the Law, ed. Peter Newman, Macmillan Publishers Ltd, vol. 51 (1998), pp. 51-56.
- “Transactional Structures of Bank Privatizations in Central Europe and Russia,” (Co-author Anna Meyendorff), Journal of Comparative Economics, (August 1997), pp. 5-30.
- “Privatization and Performance of the Czech Republic’s Komerční Banka,” (Co-author: Roger C. Kormendi), Journal of Comparative Economics, (August 1997), pp. 97-128.
- “Litigation under the English and American Rules: Theory and Evidence,” (Co-author: James W. Hughes), Journal of Law & Economics, vol. 38 (April 1995), pp. 227-250.
- “*United States v. United Shoe Machine Corporation: On the Merits*,” (Co-author: Scott E. Masten), Journal of Law & Economics, vol. 36 (April 1993), pp. 33-70.  
Reprinted in Transaction Cost Economics, vol. 2, O. Williamson and S. Masten, eds., (Edward Elgar Publishing, Ltd., London), 1995, pp. 588-625.  
Reprinted in Case Studies in Contracting and Organization, S. Masten, ed., (Oxford University Press), 1996, pp. 224-254.  
Reprinted in Journal of Reprints for Antitrust Law and Economics, issue on Landmark Antitrust Decisions Revisited, 26, 1997, pp. 643-680.  
Reprinted in Pricing Tactics, Strategies, and Outcomes, (M. Waldman & J. Johnson, ed.). Cheltenham, UK: Edward Elgar Publishing. 2007
- “Misuse of the Antitrust Laws: The Competitor Plaintiff,” (Co-author: Thomas E. Kauper), Michigan Law Review, vol. 90, (December 1991), pp. 551-603.  
Reprinted in The Journal of Reprints for Antitrust Law and Economics, vol. 25, no. 2, (1995), pp. 657-709.
- “The Costs of Organization,” (Co-authors: Scott E. Masten and James W. Meehan, Jr.), Journal of Law, Economics, and Organization, vol. 7, (Spring 1991), pp. 1-25.  
Reprinted in Transaction Cost Economics, vol. 2, O. Williamson and S. Masten, eds., (Edward Elgar Publishing, Ltd., London), 1995, pp. 119-143.
- “The Effect of Higher Criminal Penalties on Antitrust Enforcement,” Journal of Law & Economics, vol. 33, (October 1990), pp. 439-462.
- “The English Rule for Allocating Legal Costs: Evidence Confronts Theory,” (Co-author: James W. Hughes) Journal of Law, Economics, and Organization, vol. 6, (Fall 1990), pp. 345-380.

- “The Design and Duration of Contracts: Strategic and Efficiency Considerations,” (Co-author: Scott E. Masten) Law and Contemporary Problems, vol. 52 (Winter 1989), pp. 63-85.
- “The Origins and Resolution of the Thrift Crisis,” (Co-authors: Roger C. Kormendi, Victor L. Bernard, S. Craig Pirrong) Journal of Applied Corporate Finance, vol. 2 (Fall 1989), pp. 85-100.
- “Vertical Integration in the U.S. Auto Industry: A Note on the Influence of Transactions Specific Assets,” (Co-authors: Scott E. Masten, James W. Meehan, Jr.) Journal of Economic Behavior and Organization, vol. 12 (October 1989), pp. 265-73.
- “New Insights into the Decline of Antitrust Enforcement,” Contemporary Policy Issues, vol. 7 (October 1989), pp. 1-18.
- “Policy Analysis of Medical Malpractice Reforms: What Can We Learn from Claims Data?” (Co-author: James W. Hughes) Journal of Business & Economic Statistics, vol. 7, (October 1989), pp. 423-431.
- “Evaluating Medical Malpractice Reforms,” (Co-author: James W. Hughes) Contemporary Policy Issues, vol. 7, (April 1989), pp. 83-98.
- “An Inquiry into the Efficiency of Private Antitrust Enforcement,” (Co-Author: Thomas E. Kauper), Georgetown Law Journal, vol. 74, (April 1986), pp. 401-469.
- “Efficient Assignment of Rights to Sue for Antitrust Damages,” Journal of Law & Economics, vol. 28, (May 1985), pp. 469-482. Reprinted in The Journal of Reprints for Antitrust Law and Economics, vol. 25, no. 2, (1995), pp. 969-982.

Books / Articles in Books and Volumes:

- “Competitive Discounts and Antitrust Policy,” (Co-authors: Kevin M. Murphy and Robert H. Topel), The Oxford Handbook of International Antitrust Economics, edited by Roger Blair and Daniel Sokol, *forthcoming*.
- “Five Easy Questions”, Ch.2.3, in Leadership Development for a Global World: The Role of Companies and Business Schools, J.Canals (ed.), Palgrave Macmillan Ltd. Houndmills, Basingstoke, London 2012, pp. 145-160.
- Globalization of Management Education: Changing International Structures, Adaptive Strategies, and the Impact on Institutions, (Co-authors: Chair of AACSB Taskforce Robert F. Bruner, et al.), Emerald Group Publishing, (2011).
- “Social Learning and Transaction Cost Economics,” Advances in Strategic Management, A. Huff and J. Walsh, eds., (1997), pp. 223-228.
- Crisis Resolution in the Thrift Industry, (Co-authors: Roger C. Kormendi, Victor L. Bernard, S. Craig Pirrong), Kluwer Academic Press, (1989).
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#### Business School Cases and Class Materials:

- “Alternative Tools to Influence Market and Non-Market Behavior.”
- “W.R. Grace Co.'s Zonolite Licensee Program: How to Exploit Two Related Monopolies and Improve Economic Efficiency.”
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- “Human Capital, Work, and Leisure.” Co-author: Scott E. Masten.
- “Sugar Quotas.” Co-author: Edward J. Mitchell.

#### GRANTS AND FELLOWSHIPS

Grants from University of Virginia Darden School’s Batten Institute and University of Chicago Booth School of Business for major extension of previous research, 2009-



10. Resulted in “Napsterizing Pharmaceuticals: Access, Innovation, and Welfare” (January 2011).

Grants from Aventis Pharmaceuticals, University of Chicago Graduate School of Business, University of Virginia Darden School, and Bates College 2000-01. Resulted in “Napsterizing Pharmaceuticals: Access, Innovation, and Consumer Welfare,” NBER Working Paper (October 2002).

BT Grant of funds and equipment to the University of Michigan Business School to deliver educational modules using new technologies (November 1995).

U.S. Department of Treasury Grant to the Davidson Institute to study bank privatizations in Central Europe and Russia. Co-investigator: Roger C. Kormendi (June 15, 1995 – December 31, 1995).

Bradley Foundation Grant to study contract mechanisms to protect non-patentable innovations. Co-investigator: Scott E. Masten (July 1, 1989 - June 30, 1990).

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University of Michigan Office for the Study of Public and Private Institutions Research Grant to study contract mechanisms to protect non-patentable innovations. Co-investigator: Scott E. Masten (Summer 1989).

Robert Wood Johnson Foundation Grant to study the effects of tort reforms on medical malpractice litigation. Co-investigator: James W. Hughes (June 1, 1987 - December 31, 1988).

Earhart Foundation Grant to study the effects of the Supreme Court's *Brunswick* decision on private antitrust litigation (Summer 1986).

University of Michigan Business School Summer Research Grants to study private and public antitrust enforcement and other law and economics issues (1984, 1985, 1989, 1990, 1992, and 1993).

University of Chicago, Committee on Public Policy Studies Fellowship (1978).

#### INVITED PAPERS, CONFERENCE PRESENTATIONS, TESTIMONY\*

\* In this section I include information regarding my testimony and briefings in public settings. Please refer to [edwardasnyder.com](http://edwardasnyder.com) for information regarding my consulting testimony in various litigations.

“American Law and Economics Association, invited paper (with Pierre Cremieux), “Antitrust Enforcement in the EU and US: An Empirical Assessment of the Influence of Protectionism”, Vanderbilt University Law School, (May 17, 2013).

“Emerging Markets and Business School Strategies”. Invited moderator, International Conference and Annual Meeting for The Association to Advance Collegiate Schools of Business, (April 9, 2013).

“Turkey as a Pivotal Country in the Global Economy”. Presentation to DEİK, Foreign Economics Relations Board, Istanbul, Turkey, (November 30, 2012).

- “Management Challenges in the Global Economy”. Presentation to faculty, students and staff at Renmin University of China School of Business. Beijing, China. (March 2012).
- “The Management Education Industry.” AACSB Annual Deans Conference Plenary Session with Deans Christine Poon, Joseph Thomas, and Andrew Policano) Phoenix, Arizona, (February 20, 2011).
- “U.S. Business Schools and the MBA: A Long Perspective.” EFMD Annual Meeting of Deans and Directors, Lyon, France, (January 25, 2011).
- “Proof of Common Impact in Antitrust Litigation: The Value of Regression Analysis.” George Mason 13th Annual Symposium on Antitrust Law, February 4, 2010; Analysis Group Seminar, New York, NY, (October 20, 2010).
- “Digging Out of the Deficit.” Executive Roundtable Panel Discussion with Governors Tim Pawlenty (MN), Donald Carcieri (RI), Mark Sanford (SC), Robert McDonnell (VA), and John Kasich, Candidate for Governor (OH), Cincinnati, Ohio, (September 20, 2010).
- “Corporate Governance.” Inside Counsel’s 10<sup>th</sup> Annual Super Conference, invited panel. Chicago, IL, (May 25, 2010).
- “The Future of §2 Enforcement.” Antitrust Section of the New York State Bar Association, Annual Meeting, (January 28, 2010).
- “Global Antitrust Enforcement.” Center for Public Studies, Santiago, Chile, (September 2009).
- “Globalization of Management Education.” Plenary Speaker at AACSB Annual Deans Conference, San Francisco, CA, (February 5, 2009).
- “The Role of Economic Experts in Class Certification in the United States.” The American Bar Association Section of Antitrust Law Trial Practice Committee, (June 17, 2008).
- “How to Use Economics.” Illinois Agricultural Leadership Seminar. Chicago, IL (August 2006).
- “Are Business Schools Becoming Truly Global?” with Dean Santiago Iñiguez. AACSB Dean’s Conference, San Diego, CA, (February 6, 2006).
- “Strategic Choices in a Global Environment.” Presentation with Dean Santiago Iñiguez. European Foundation for Management Development Deans’ Conference, Rotterdam School of Management, The Netherlands, (January 26, 2006).
- “How to Use Economics.” Distinguished Alumni Presentation, Colby College, (October 2005).
- “Hatch-Waxman and Public Policy Toward Pharmaceuticals.” Presentation at Summer 2002 Conference for Western Attorneys General (2002).
- Congressional Briefing, “Hatch-Waxman Reconsidered: How Best to Promote Prescription Drug Innovation and Affordability,” sponsored by the Alliance for Health Reform and supported by the National Institute of Health Care Management, (June 13, 2002).



Combined Federal Trade Commission and Department of Justice Hearings on Competition and Intellectual Property Policy. Presentation of testimony on Hatch-Waxman and Public Policy Toward Pharmaceuticals, (March 2002).

Graduate Business Conference, Johnson Graduate School of Management, Cornell University, invited panel, The Future of Management Education, (March 2001).

“Economics and Government Policy.” Panel Discussion with Edward P. Lazear, Randall S. Kroszner, and Lawrence H. Summers, Honoring Gary S. Becker: A Conference, Chicago, IL, (February 11, 2001).

New York State Bar Association, invited panel on Indirect Purchaser Litigation in Antitrust, New York, NY, (January 2001).

University of Virginia, E-Summit’s Plenary Session, (November 1999).

European Association of Comparative Economics, Annual Conference, invited panel, Bank Privatization, Grenoble, France, (September 1996).

University of Chicago, Conference on Tort Reform, Commentator for Steven Shavell, (June 1996).

U.S. Department of Treasury, Davidson Institute, “Banks in Transition: Investment Opportunities in Central Europe and Russia,” New York City, (May 1996).

U.S. Department of Treasury, Davidson Institute, “Bank Privatization in Central Europe and Russia,” Budapest, (April 1996).

American Law and Economics Association, invited paper (with Greg Niehaus), “Damage Schedules in the Products Liability System and the Efficiency of Consumption Choices,” (May 1994).

American Economics Association, invited paper (with James W. Hughes), “Litigation under the English and American Rules: Theory and Evidence,” (January 1994).

University of Michigan Presidential Forum on *Constituting International Expertise: Who, What, Where Why, How?*, “Transitions in Expertise,” (October 1993).

American Law and Economics Association, invited paper (with James W. Hughes), “Litigation under the English and American Rules: Theory and Evidence,” (May 1992).

Western Economic Association, 100 Years of the Sherman Act, invited paper (with Thomas E. Kauper), “Misuse of the Antitrust Laws,” (June 1990).

Western Economic Association, Applied Microeconomics, invited paper, “Aftermath of the *Sealy* Antitrust Litigation,” (June 1990).

Law and Society Association, invited paper (with James W. Hughes), “The English Rule for Allocating Legal Costs: Evidence Confronts Theory,” (June 1989).

Duke University, Conference on the Law and Economics of Contracting, invited paper (with Scott E. Masten), “The Design and Duration of Contracts: Strategic and Efficiency Considerations,” (April 1988).

U.S. Senate Banking Committee, testimony based on research paper (“The Origins and Resolution of the Thrift Crisis”), (February 1988).

Georgetown University, Conference on Private Antitrust Enforcement, invited paper (with Thomas E. Kauper), “An Inquiry into the Efficiency of Private Antitrust Enforcement,” (November 1985).

Hoover Institution, Conference on Antitrust and Economic Efficiency, invited paper, “Efficient Assignment of Rights to Sue for Antitrust Damages,” (August 1984).

## SEMINARS AND OTHER PRESENTATIONS

University of Chicago

Applied Price Theory Workshop (4/84, 10/84, 10/02).

Economics and Legal Organization Workshop (10/90, 1/92, and 5/92).

University of Virginia, e-Summit (11/99).

U.S Treasury (2/96).

Davidson Institute Research Seminar Series (4/95).

University of Michigan, Center for Chinese Studies (10/94).

Young Presidents Organization, Asia Region Meetings (2/94).

Confederation of Indian Industries, CEO Forum (2/94).

Harvard University Law School, Law and Economics Seminar (4/93).

George Mason University Law School, Law and Economics Seminar (10/92).

University of Illinois, Industrial Organization Workshop (4/92).

Georgetown University Law School, Law and Economics Workshop (11/91).

Cornell University Law School (4/91).

University of Southern California, Applied Micro Workshop (10/90).

University of California at Los Angeles, Industrial Organization Workshop (10/90).

Virginia Polytechnic Institute, Economics Department Seminar (11/89).

Ohio State University, Industrial Organization Seminar (5/88), Microeconomic Theory Workshop (10/86).

Federal Trade Commission (10/88, 10/92).

Western Economic Association (7/87, 7/88, 6/90, and 7/96).

Duke University, Center for the Study of Business Regulation (11/86 and 12/92).

Colby College (5/85, 2/92, 3/96).

U.S. Department of Justice, Antitrust Division (5/85, 5/86, 5/87, 11/89, and 5/91).

Washington University, Industrial Organization Workshop (3/85).

University of Michigan,

Industrial Organization Workshop (2/84, 4/85, 9/86, 1/88, and 3/88).

Law and Economics Seminar (10/89, 4/90, and 1/92).

#### PH.D. THESIS COMMITTEE SUPERVISION

Alowin M. Th. L. Moses, “A Model of Voucher Privatization” (University of Michigan, 1996).

Vijay Singal, “Efficiency Versus Market Power in Mergers: Evidence from the Airline Industry” (University of Michigan, 1992).

David E. Weinstein, “Essays on Japan's Trade and Industrial Structure” (University of Michigan, 1991).

Debra J. Holt, “Understanding Strategic Choice: The Statistical Analysis of Experimental Games” (University of Michigan, 1990).

David J. Denis, “Asymmetric Information and the Market for Seasoned Equity Offerings: Theory and Evidence” (University of Michigan, 1988).

Amy J. Broman, “The Impact of Federal Income Tax Policy on the Charitable Contributions Behavior of Households” (University of Michigan, 1987).

James W. Hughes, “Tort Reforms and Medical Malpractice Litigation” (University of Michigan, 1986).

Barton L. Lipman, “Delaying or Deterring Entry: A Game-Theoretic Analysis” (University of Michigan, 1985).

#### OTHER

Trustee, Colby College

International Advisory Committee, School of Business, Renmin University of China

Member of American Law and Economics Association

# EXHIBIT D

MATTHEW MARX - 11/15/2013

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

--oOo--

IN RE: HIGH-TECH EMPLOYEE	)	
ANTITRUST LITIGATION,	)	
	)	
	)	Master Docket No.
	)	11-CV-2509-LHK
	)	
THIS DOCUMENT RELATES TO:	)	
	)	
ALL ACTIONS	)	
_____	)	

DEPOSITION OF

MATTHEW MARX

\_\_\_\_\_  
NOVEMBER 15, 2013

REPORTED BY: SARAH LUCIA BRANN, CSR 3887

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1 MS. SESSIONS: Justina Sessions for  
2 Google.

3 MR. DALLAL: James Dallal for the  
4 plaintiffs.

5 MR. HARVEY: Dean Harvey of Lief  
6 Cabraser, for the plaintiffs.

7 THE VIDEOGRAPHER: Very good.

8 Sarah, could you please swear the witness  
9 in?

10 MATTHEW MARX

11  
12 called as a witness, who, having been first duly  
13 sworn, was examined and testified as follows:

14 THE VIDEOGRAPHER: Please proceed.

15 EXAMINATION BY MR. PHILLIPS

16 MR. PHILLIPS: Q. Good morning, Dr. Marx.  
17 Have you ever had your deposition taken before?

18 A. No. This would be my first time.

19 Q. Have you spoken with counsel for the  
20 plaintiffs about the deposition procedure?

21 A. Do you mean in preparation for today?

22 Q. Yes.

23 A. I did.

24 Q. Do you have any questions about the  
25 procedure we are going to follow today?

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1           And if I can see the full list of work  
2   cited, I could go through and tell you about each of  
3   those.

4           Q.    I may come back to that.  Thank you.

5                   Did anyone assist you in the preparation  
6   of your report?

7           A.    No.  No one knows that I'm working on  
8   this.

9           Q.    No one knows other than the lawyers  
10   involved in the case?  Is that what you mean?

11          A.    Of course.

12          Q.    Is there some reason why you haven't told  
13   anyone else that you are working on this?

14          A.    I thought I was under obligation not to  
15   disclose my involvement.

16          Q.    And could you just describe how you went  
17   about preparing your report generally?

18          A.    Sure.  So -- so as I mentioned, I began by  
19   reading the materials that had been -- that had been  
20   filed in this case, the depositions, the exhibits,  
21   the contracts, the complaints, the interrogatory  
22   responses on both sides, the white papers.  I failed  
23   to mention those earlier.

24                   Because I was asked to do two things, one,  
25   to render an opinion on whether the

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1 anti-solicitation agreements could have influenced  
2 mobility and compensation, and then also whether the  
3 agreements would have been reasonably necessary for  
4 the technical collaborations.

5 So the first step was to familiarize  
6 myself with all of the documents, including -- well,  
7 the documents that I just said. And then the next  
8 step was to form hypotheses about how -- how  
9 defendants would have acted, given these  
10 anti-solicitation agreements, given the  
11 justifications put forth in the interrogatory  
12 responses.

13 Having formed those hypotheses, I then  
14 matched them up against the evidence from the  
15 exhibits, from the depositions, and came to my  
16 conclusions.

17 And after that -- and as well I  
18 familiarized myself with the literature on employee  
19 non-competes, some of which I have written myself,  
20 others of which have been written by other people,  
21 and I drew parallels between the effect of  
22 non-competes and the effect of -- and likely effect  
23 of anti-solicitation agreements. I then composed  
24 the report and submitted it on the 28th.

25 MR. TUBACH: Sorry to interrupt. Because



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1 MR. PHILLIPS: Q. Sir, have you ever  
2 spoken to anyone at the Department of Justice about  
3 the consent decree or anything else?

4 A. I have not. I have read the -- I have  
5 read the document.

6 Q. Anything else -- anything else that you  
7 believe indicates that the defendants thought that  
8 the anti-solicitation agreements were necessary in  
9 order for them to collaborate?

10 A. Okay. In -- continuing on, in F, Pixar  
11 said that its anti-solicitation agreement with  
12 Lucasfilm avoided cold calling activity that could  
13 be harmful to that close relationship and disruptive  
14 to those beneficial collaborations, and further goes  
15 on to say that the relationship with Apple was  
16 assisted by the fact that the companies did not  
17 engage in cold calling activity that could be  
18 harmful to that close relationship and disruptive to  
19 those beneficial collaborations.

20 Q. And do you agree or disagree with the  
21 notion that cold calling activity could be harmful  
22 to a collaborative relationship and disruptive of  
23 it?

24 A. I think it's possible that it could be  
25 disruptive. That's why they are worried about that.

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1 Q. Any other indications the defendants  
2 thought that the anti-solicitation agreements were  
3 necessary in order for them to collaborate at all?

4 A. So the last item is in G, where Intel  
5 defended its anti-solicitation agreement because  
6 if -- if another -- if a collaborator --

7 Excuse me.

8 Because having a collaborator hire its --  
9 not hire. Sorry. But having a collaborator cold  
10 call and target its employees would be seen as  
11 significantly undermining trust, causing significant  
12 ill will, and having significant negative  
13 repercussions on the collaboration, which would be  
14 indicative that they were -- that they might  
15 consider not having the collaboration without it.

16 Q. That they might consider not having the  
17 collaboration, but that they also might consider  
18 still having the collaboration; correct?

19 A. They could still consider it.

20 Q. Do you agree or disagree with the  
21 statement there that cold calling by a collaborator  
22 might significantly undermine trust, cause ill will,  
23 have negative repercussions on a collaboration?

24 A. I think my answer to that would be similar  
25 to my answer to your questions on the previous

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1 statements, that it is possible that that could be  
2 the case. And for that reason, it was surprising to  
3 me that the defendants entered into technical  
4 collaborations where no anti-solicitation agreement  
5 was included.

6 MR. PHILLIPS: Move to strike, starting  
7 with "and for that reason" as non-responsive.

8 MR. HARVEY: Objection.

9 MR. PHILLIPS: Q. In paragraph 25 at the  
10 top of page 14 you say that "Defendants argue that  
11 the Anti-Solicitation agreements are essential for a  
12 successful technical collaboration."

13 And you then say, "If one takes this  
14 argument at face value, then a rational company  
15 should adopt Anti-Solicitation agreements if and  
16 only if undertaking a technical collaboration with  
17 another firm," and that this implies two actions,  
18 that "Every Anti-Solicitation agreement between two  
19 companies should be tied to a corresponding  
20 technical collaboration," and that "Every technical  
21 collaboration should have an Anti-Solicitation  
22 agreement in place between the two companies."

23 Do you see that?

24 A. I do.

25 Q. Is that your opinion?

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1 A. It is.

2 Q. That opinion depends upon the premise that  
3 an anti-solicitation agreement is necessary to any  
4 technical collaboration; correct?

5 A. It depends on the assumption that the  
6 defendants believe that, yes.

7 Q. And that there would not be any technical  
8 collaboration in the absence of an anti-solicitation  
9 agreement; correct? That's the premise of this.

10 MR. HARVEY: Objection as to form.

11 THE WITNESS: That there -- yes.

12 Sorry. May I clarify the answer?

13 Yes, assuming, though I didn't write this,  
14 that the companies wanted that technical  
15 collaboration to be successful, which I would  
16 assume. Otherwise they would not take the time to  
17 establish the technical collaboration.

18 Q. To be successful, or to be as successful  
19 as it possibly could be?

20 A. I'm not sure I can distinguish between  
21 that.

22 Q. We talked before about degrees of success,  
23 and I think you agreed with me that there could be  
24 degrees of success in a collaboration.

25 And my question now is, do you think --

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1 when you said assuming that the companies wanted the  
2 technical collaboration to be successful, did you  
3 mean just successful to some extent, or did you mean  
4 as successful as it possibly could be?

5 MR. HARVEY: Objection as to form.

6 THE WITNESS: I guess I'm confused because  
7 your question seems to presuppose that the companies  
8 would enter a technical collaboration wanting it to  
9 not succeed as much as it could, that they might  
10 enter a half-hearted technical collaboration. And  
11 that is not the sentiment expressed in the  
12 interrogatory responses, as far as I understand  
13 them.

14 MR. PHILLIPS: Q. Well, do you think that  
15 a company that was faced with a choice, they could  
16 either collaborate with another company and run the  
17 risk -- put their best employees into the  
18 collaboration and run the risk of having those  
19 employees poached by their collaborator, or they  
20 could do the collaboration and not put necessarily  
21 the best employees in, although they still think the  
22 collaboration would be beneficial to them?

23 Might the employer decide to do the  
24 latter, in other words, do the collaboration with  
25 not necessarily their best employees, but with the

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1 expectation that it would still be successful? Do  
2 you think they might make that decision?

3 MR. HARVEY: Object as to form.

4 THE WITNESS: I would say that a company  
5 facing the decision of whether to launch a technical  
6 collaboration has a lot of degrees of freedom,  
7 including who to include in that collaboration,  
8 including what incentives to give to the people in  
9 that collaboration to improve their chances of  
10 staying.

11 And they can do that with potential  
12 rewards. They can also do that with -- sorry. They  
13 can do that with incentives to retain them, and --  
14 otherwise they may do it with mechanisms to -- to  
15 block the chances of them being recruited. So they  
16 could have multiple approaches to that scenario.

17 MR. PHILLIPS: Q. And one approach might  
18 be to assign different employees than they otherwise  
19 would to the collaboration; correct?

20 A. That could be another approach.

21 Q. And might assigning such employees to the  
22 collaboration potentially reduce the success of the  
23 collaboration?

24 A. It could.

25 Q. And would the reduction in the success of

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1 that collaboration potentially have adverse effects  
2 for consumers?

3 MR. HARVEY: Objection as to form.

4 THE WITNESS: Possibly.

5 MR. PHILLIPS: Q. So it's not in fact the  
6 case that -- strike that.

7 So one of the results of an  
8 anti-solicitation agreement of the type that you  
9 talk about in your reports might be to ensure that  
10 the collaborators can use their best employees in  
11 the collaboration without fear of having them  
12 poached; correct?

13 MR. HARVEY: Objection as to form.

14 THE WITNESS: That could be one reason.

15 MR. PHILLIPS: Q. And that would  
16 potentially make the collaboration more successful;  
17 correct?

18 MR. HARVEY: Objection as to form.

19 THE WITNESS: It could, though there are  
20 other means by which they could achieve that end.

21 MR. PHILLIPS: Q. And if this  
22 collaboration were successful, it might generate  
23 more benefits for consumers; correct?

24 MR. HARVEY: Objection as to form.

25 THE WITNESS: It might, or it might

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1 generate private benefits for the company.

2 MR. PHILLIPS: Q. Or both; correct?

3 MR. HARVEY: Objection as to form.

4 THE WITNESS: Or both.

5 MR. PHILLIPS: Q. And it might even, for  
6 example, generate additional jobs; correct?

7 MR. HARVEY: Objection as to form.

8 THE WITNESS: I don't know. I don't have  
9 a strong opinion on that.

10 MR. PHILLIPS: Q. Well, if, for example,  
11 the collaboration resulted in creating a product  
12 that was particularly appealing to consumers, might  
13 not there be more jobs created for people to  
14 actually make that product?

15 MR. HARVEY: Objection as to form.

16 THE WITNESS: Oh, so you are saying if, in  
17 the long run, if the collaboration caused the  
18 company to perform better, might that mean -- well,  
19 it would mean a lot of -- there could be a lot of  
20 outcomes. The company could potentially do better.

21 MR. PHILLIPS: Q. And create more jobs;  
22 right?

23 A. That could be an outcome.

24 Q. So an anti-solicitation agreement in  
25 connection with a technical collaboration, can be --



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1 can generate benefits for consumers by improving the  
2 success of that venture, by making it more  
3 successful, even if the collaboration would have  
4 occurred in the absence of the anti-solicitation  
5 agreement; correct?

6 MR. HARVEY: Objection as to form.

7 THE WITNESS: I am sorry. Can you ask one  
8 more time?

9 MR. PHILLIPS: Q. An anti-solicitation  
10 agreement can, by generating -- by making a  
11 collaboration more successful than it otherwise  
12 would have been, can generate benefits for consumers  
13 even if that collaboration would have occurred in  
14 another form without the anti-solicitation  
15 agreement; correct?

16 MR. HARVEY: Same objection.

17 THE WITNESS: Yeah, I would agree with  
18 that.

19 MR. PHILLIPS: Q. Going back to page two  
20 of your report --

21 I am sorry. One other question along this  
22 line.

23 If in the course of a collaboration one of  
24 the companies cold called and stole away key  
25 employees of the other company, do you think that

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1 that would have any effect on the willingness of  
2 the -- that other company to collaborate in the  
3 future?

4 MR. HARVEY: Objection as to form.

5 THE WITNESS: So you are saying if two  
6 companies had a technical collaboration --

7 MR. PHILLIPS: Q. I want to restate the  
8 question to make it more clear for you.

9 Company A and company B have a  
10 collaboration. Company B steals company A's key  
11 employees who were part of the collaboration. Do  
12 you think that might make company A less willing to  
13 collaborate with company B in the future?

14 MR. HARVEY: Objection as to form.

15 THE WITNESS: It could make them less  
16 eager to do that, or it could -- yes.

17 MR. PHILLIPS: Q. Would that be good or  
18 bad for consumers, do you think?

19 MR. HARVEY: Objection as to form.

20 THE WITNESS: I think it's -- you can't  
21 generalize based -- I mean, it could go either way.

22 MR. PHILLIPS: Q. It might be good.

23 A. It might be. But that's --

24 Q. I am sorry. Strike that.

25 It might be good if they collaborated in

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1 something.

2 Please continue.

3 THE WITNESS: Because I don't think that  
4 they -- whoops. Am I missing a document? Here it  
5 is.

6 Right. So I think that -- I agree with  
7 that. I believe I said something to that effect in  
8 the 2012 paper, because a full welfare analysis has  
9 not been conducted.

10 MR. PHILLIPS: Why don't we take a short  
11 break?

12 MR. HARVEY: Okay.

13 THE VIDEOGRAPHER: Going off the record,  
14 the time now is 11:38.

15 (Recess taken from 11:38 to 12:00.)

16 THE VIDEOGRAPHER: Very good. Tape is  
17 rolling. The time now is 12:00 o'clock, and we are  
18 back on the record.

19 MR. PHILLIPS: Q. Dr. Marx, I want to  
20 talk a little bit about the Intel-Google arrangement  
21 again.

22 In your view, was that arrangement under  
23 which Google would not cold call Intel's employees  
24 in Intel's self-interest?

25 MR. HARVEY: Objection as to form.

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1 THE WITNESS: I would say that Intel  
2 thought it was. Otherwise it probably would not  
3 have entered into that agreement.

4 MR. PHILLIPS: Q. Do you believe that the  
5 arrangement under which Google would not cold call  
6 Intel's employees was in Intel's self-interest?

7 MR. HARVEY: Objection as to form.

8 THE WITNESS: I wasn't asked to arrive at  
9 an opinion on that, and I don't have a strong  
10 opinion.

11 MR. PHILLIPS: Q. Do you have any  
12 opinion?

13 A. Not an opinion I'd be -- that I can stand  
14 by. It would require more thought.

15 Q. Do you think that the arrangement with  
16 Google made it any less likely that Intel would lose  
17 employees that it cared about keeping?

18 A. I believe that's true, and I believe we  
19 see that both in the ways that -- in that the  
20 anti-solicitation agreements in general were  
21 designed to block the flow of talent out of the  
22 organizations. And so that would be one of the  
23 desired outcomes of the anti-solicitation agreement.

24 MR. PHILLIPS: Move to strike as  
25 non-responsive after "I believe that's true."

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1 MR. HARVEY: Objection.

2 MR. PHILLIPS: Q. And do you believe that  
3 Intel had a self-interest in not losing employees  
4 that it cared about keeping?

5 A. I think every company desires to keep  
6 employees that it cares about, and that would  
7 include Intel.

8 Q. And do you believe that the Google-Intel  
9 arrangement would have been in Intel's self-interest  
10 in that regard, regardless of whether there were  
11 such arrangements between any of the other  
12 defendants?

13 A. When you say -- if when you say "in that  
14 regard" you mean --

15 Q. I will restate the question. That's fair.  
16 Do you believe that it was in Intel's  
17 self-interest to have an arrangement with Google  
18 under which Google would not cold call Intel's  
19 employees even if there were no other such  
20 agreements between any of the other defendants?

21 A. I think it's likely, but there are other  
22 possibilities. For example, if Intel or any of the  
23 defendants became known as a company that was  
24 difficult to leave because it had anti-solicitation  
25 agreements in place, then it could potentially

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1 become harder for them to hire people who didn't  
2 want to be subject to these anti-solicitation  
3 agreements. That said, given that the  
4 anti-solicitation agreements were done in secret and  
5 engineers were generally not aware of them until  
6 this action was brought, it's possibly a net  
7 positive for them on the -- in that respect.

8 Q. So it's your opinion that the Google-Intel  
9 arrangement was in Intel's self-interest, even if  
10 there were no other such agreements between the  
11 other defendants; correct?

12 A. I lean that way, but I would want to think  
13 more about it. Again, that wasn't my task in this  
14 endeavor, to assess the effect on the companies.

15 Q. Are you aware of any evidence that any of  
16 these companies became places that were more  
17 difficult to leave?

18 A. Am I aware of any evidence that these  
19 places became more difficult to leave?

20 Q. Yes.

21 MR. HARVEY: Objection as to form.

22 THE WITNESS: In the sense that a party to  
23 one of these anti-solicitation agreements that  
24 there -- sorry. Let me start over.

25 I would say not more difficult to leave as

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1 in the company expressly prohibited them from  
2 leaving the company. In fact, employees can quit at  
3 any time. But yes in the sense that the employees  
4 of a company that was party to one of these  
5 anti-solicitation agreements might not find out  
6 about job opportunities -- attractive job  
7 opportunities at other firms.

8 MR. PHILLIPS: Q. And that would be true  
9 for Intel only with respect to an opportunity at  
10 Google, potentially; correct?

11 A. Yes, that's the scope of the agreement.

12 Q. And let's -- I'm going to talk now about  
13 the agreement between Apple and Adobe,  
14 do-not-cold-call arrangement between Apple and  
15 Adobe.

16 How would a do-not-cold-call agreement  
17 between Apple and Adobe further Intel's interests?

18 A. It could come across in -- it could happen  
19 in two ways. The primary way is that if, by virtue  
20 of Apple promising not to cold call people from  
21 Adobe, if by that compensation of Adobe employees  
22 were suppressed, then if Intel wanted to hire  
23 someone from Adobe who it could cold call, it might  
24 need to pay not as high compensation as it would in  
25 the case where that compensation had not been

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1 suppressed.

2 So I would say that is the -- yeah, I  
3 would say that is the primary way in which it could  
4 further Intel's interests.

5 Q. Any other way in which it could further  
6 Intel's interest?

7 A. That's the main one that comes to mind.

8 Q. Does it -- would the Apple-Adobe agreement  
9 make it more likely that Apple would cold call  
10 Intel's employees?

11 A. Not necessarily.

12 Q. When you say not necessarily, it could,  
13 however, make it more likely that Apple would cold  
14 call Intel's employees; correct?

15 A. I suppose that's possible.

16 Q. Are you skeptical about it because there  
17 are so many other companies that Apple might cold  
18 call in addition to Intel that it seems speculative  
19 that they would cold call an Intel employee instead  
20 of an Adobe employee as opposed to employees that  
21 might have been at other dozens of companies?

22 MR. HARVEY: Objection as to form.

23 THE WITNESS: No, that's not the reason I  
24 am skeptical. The reason I am skeptical is that  
25 they could call the Intel -- they could cold call



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1 the Intel employee anyway, and wouldn't necessarily  
2 be more likely to do that in the presence of an  
3 anti-solicitation agreement with Adobe. Those  
4 activities might -- are -- could be independent.

5 MR. PHILLIPS: Q. But they might not be,  
6 because they might cold call -- if they could cold  
7 call Adobe maybe they would hire that person, and  
8 then they wouldn't cold call the Intel person;  
9 correct?

10 MR. HARVEY: Objection as to form.

11 THE WITNESS: I suppose if they filled the  
12 position by -- so, if their cold calling practices  
13 were dependent on having filled a particular job,  
14 then there could be an effect. But to the extent  
15 that they were broadly cold calling and trying to  
16 generate attractive talent more generally, then I  
17 think it's unlikely to be this offsetting effect  
18 would occur in the way that was characterized.

19 MR. PHILLIPS: Q. Do you agree that  
20 these -- the defendants in this case, is it fair to  
21 say, are all characterized as high technology  
22 companies?

23 A. Yes, I would.

24 Q. Do you agree that these high technology  
25 companies' value and assets are less related to

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1 physical property and plant and equipment than to  
2 the knowledge and expertise of their employees?

3 A. I would generally agree with that, though  
4 it may be less true of the non-software companies.

5 Q. It might be somewhat less true of Intel  
6 than the others. Is that what you think?

7 A. I would agree with that.

8 Q. But are the -- putting aside the way you  
9 described about Intel, would you agree that the  
10 technological skills and knowledge of the employees  
11 are these companies' most valuable assets?

12 A. Generally speaking, I would agree with  
13 that.

14 Q. And would you think that that was  
15 especially true of employees who have accrued  
16 technical expertise as a result of the company's  
17 investment in them?

18 A. I don't disagree with that statement. But  
19 also important is the skills that they brought to  
20 the company when they joined, from their education,  
21 from prior experience, and so on.

22 Q. But you do agree with the statement that  
23 it's especially true of employees who have accrued  
24 technical expertise as a result of the company's  
25 investment in them; correct?

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1 A. Can you say that question one more time?

2 Q. Do you think that it is especially true  
3 that the most valuable assets of the firms are those  
4 employees who have accrued technical expertise as a  
5 result of the company's investment in them?

6 A. Just a minute. I would agree with that.

7 Q. And do you agree that such employees, if  
8 they joined another high technology company, would  
9 be at particular risk of disclosing, either  
10 intentionally or not, confidential proprietary  
11 information important to their prior employer's  
12 business?

13 MR. HARVEY: Objection as to form.

14 THE WITNESS: I am sorry. Can I have the  
15 question one more time?

16 MR. PHILLIPS: Q. Yes. Do you agree that  
17 such employees, if they joined another high  
18 technology company, would be at risk of disclosing,  
19 either intentionally or not, confidential  
20 proprietary information important to their prior  
21 employer's business?

22 A. I think a company would be concerned about  
23 that with any employee. But I think your question  
24 was whether the employees that the companies  
25 invested in would be at greater risk --

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1 Q. Technical employees in whom the companies  
2 had invested, yes, would they be at particular risk  
3 of doing that, not necessarily intentionally, but  
4 intentionally or otherwise?

5 A. I wouldn't say that they are at greater  
6 risk of breaking their non-disclosure agreement, but  
7 it could be that, were they to break the  
8 non-disclosure agreement, there might be a greater  
9 harm caused by that.

10 Q. And it's very difficult to enforce  
11 non-disclosure agreements; correct?

12 MR. HARVEY: Objection as to form.

13 THE WITNESS: I would say many firms claim  
14 that to be the case.

15 MR. PHILLIPS: Q. And some courts have  
16 agreed and recognized that as a reason to allow  
17 enforcement of non-compete agreements; right?

18 MR. HARVEY: Objection as to form.

19 THE WITNESS: That is correct.

20 MR. PHILLIPS: Q. And in fact, some have  
21 recognized that former employees may inevitably  
22 disclose proprietary information to a new employer;  
23 correct?

24 MR. HARVEY: Objection as to form.

25 THE WITNESS: That is right.

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## 1 CERTIFICATE OF REPORTER

2 I, SARAH LUCIA BRANN, a Certified  
3 Shorthand Reporter, hereby certify that the witness  
4 in the foregoing deposition was by me duly sworn to  
5 tell the truth, the whole truth, and nothing but the  
6 truth in the within-entitled cause;

7 That said deposition was taken in  
8 shorthand by me, a disinterested person, at the time  
9 and place therein stated, and that the testimony of  
10 the said witness was thereafter reduced to  
11 typewriting, by computer, under my direction and  
12 supervision;

13 That before completion of the deposition,  
14 review of the transcript [X] was [ ] was not  
15 requested. If requested, any changes made by the  
16 deponent (and provided to the reporter) during the  
17 period allowed are appended hereto.

18 I further certify that I am not of counsel  
19 or attorney for either or any of the parties to the  
20 said deposition, nor in any way interested in the  
21 event of this cause, and that I am not related to  
22 any of the parties thereto.

23 DATED: November 20, 2013

24

25 SARAH LUCIA BRANN, CSR No. 3887

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 Westwood, MA 02090  
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**EMPLOYMENT**

<b>MIT Sloan School of Management</b>	Cambridge, MA
Alvin J. Siteman (1948) Career Development Professor of Entrepreneurship	2010-present
Assistant Professor of Technological Innovation, Entrepreneurship, and Strategic Management	2009-present

<b>Tellme Networks</b> (acquired by Microsoft)	Mountain View, CA
Vice President, Solutions Delivery	1999-2004

- Hired and led 75-person team that launched speech recognition services handling 1 billion calls per year.
- Grew annualized revenue from \$5M to \$100M. Reported to CEO and presented regularly to board.

<b>SpeechWorks International</b> (completed IPO)	Boston, MA
User Interface Engineer	1994-1999

- Designed and implemented applications for Fortune 500 clients.
- Catalyzed decision to switch company's commercialization strategy from technology licensing to services.

**EDUCATION**

<b>Harvard University</b>	Boston, MA
Doctor of Business Administration	June 2009

Dissertation Title: Essays on Employee Non-compete Agreements.

Committee: Lee Fleming (chair), Rakesh Khurana, Josh Lerner

<b>Harvard University</b>	Boston, MA
Master of Business Administration (with Distinction)	2005

<b>Massachusetts Institute of Technology</b>	Cambridge, MA
S.M., Media Arts and Sciences (Motorola Fellow)	1995

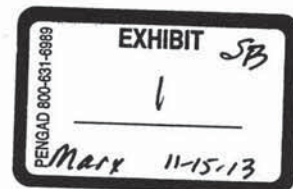
Master's Thesis Title: Toward Effective Conversational Messaging

Committee: Christopher Schmandt (chair), Pattie Maes, Nicole Yankelovich

<b>Stanford University</b>	Stanford, CA
B.S., Symbolic Systems (with Distinction, Phi Beta Kappa, degree completed in three years)	1993

**RESEARCH INTERESTS**

My years as an engineer and an executive in startup companies yielded a deep interest in the emergence and evolution of new organizations. I employ both econometric methods and fieldwork to analyze how ventures assemble and deploy resources. My dissertation research explores the role of employee non-compete agreements in the ability of organizations to acquire talent and has been cited by the Massachusetts Governor's office as influencing their decision to support non-compete reform. More recently, I have constructed a dataset covering the speech recognition industry since its inception in 1952 in order to explore how entrants formulate technical commercialization strategies and how these choices impact performance. My work has been recognized with several awards including a Kauffman Junior Faculty Fellowship in Entrepreneurship.



## **PUBLICATIONS**

J. Singh and M. Marx. "Geographic Constraints on Knowledge Diffusion: Political Borders vs. Spatial Proximity." *Management Science* (forthcoming).

M. Marx and L. Fleming. "Non-compete Agreements: Barriers to Entry...and Exit?" in J. Lerner and S. Stern, eds., *Innovation Policy and the Economy* 12. (2012)

M. Marx, "The Firm Strikes Back: Non-Compete Agreements and the Mobility of Technical Professionals." *American Sociological Review* 76(5):695-712. (2011)

M. Marx, D. Strumsky, and L. Fleming, "Mobility, Skills, and the Michigan Non-compete Experiment." *Management Science* 55(6):875-889 (lead article). (2009)

L. Fleming and M. Marx, "Managing Inventive Creativity in Small Worlds." *California Management Review* 48(4):6-27. Winner of the Accenture Award for Contribution to Management Practice. (2007)

C. Christensen, M. Marx, and H. Stevenson. "The Tools of Cooperation and Change." *Harvard Business Review* 84(10). (2006)

## **WORKING PAPERS**

M. Marx and D. Hsu. "Technology Commercialization Strategy Dynamics and Entrepreneurial Performance: Evidence from the Speech Recognition Industry." (Second-round revise & resubmit at *Management Science*)

M. Marx, J. Singh, and L. Fleming, "Does Non-compete Enforcement Create a 'Brain Drain'?" (under review at *Journal of Law, Economics, and Organization*)

K. Younge and M. Marx, "The Value of Employee Retention: Evidence from a Natural Experiment." (under review at *Journal of Economics and Management Strategy*)

M. Marx and A. Kacperczyk, 2013. "Revisiting the Small-Firm Effect on Entrepreneurship: Evidence from Dissolutions." (under review at *Management Science*)

M. Marx, 2013. "Good work if you can get it...again: Non-compete agreements, technical expertise, and staffing small firms."

M. Marx, 2013. "On a Tight Leash? Venture Capital Staging and Strategic Flexibility."

M. Marx, 2013. "Co-mobility."

M. Marx and D. Hsu, 2013. "Strategic "switchbacks": dynamic commercialization strategies for technology entrepreneurs."

M. Ewens and M. Marx, 2013. "After the Thrill Is Gone: Investor Intervention in Imperiled Portfolio Companies."

A. Kacperczyk and M. Marx, 2013. "Firm Failure, Stigma, and Entrepreneurship."

## **FELLOWSHIPS AND AWARDS**

2013 Ewing Marion Kauffman Foundation Junior Faculty Fellowship in Entrepreneurship (\$40,000)

2011 MIT Sloan Junior Faculty Research Assistance Program Grant (\$33,000)

2011 Edward B. Roberts (1957) Fund, MIT Entrepreneurship Center Fund Grant (\$16,500)

2010-2012 Alvin J. Siteman (1948) Career Development Chair

2010 DRUID Best Dissertation Award

2010 Academy of Management Technology Innovation Management Division Best Dissertation Finalist



2009 Academy of Management Technology Innovation Management Division Best Student Paper Award  
2009 Wyss Award from Harvard Business School for Excellence in Doctoral Research  
2008 Academy of Management Business Policy and Strategy Division Distinguished Student Paper Award  
2007 California Management Review Accenture Award for Contribution to Management Practice  
2007-2008 Ewing Marion Kauffman Dissertation Fellowship

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#### **TECHNICAL PUBLICATIONS AND PATENTS**

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U.S. Patent #7,321,856 "Handling of speech recognition in a declarative markup language." (2008)

U.S. Patent #7,143,039 "Providing menu and other services for an information processing system using a telephone or other audio interface." (2006)

U.S. Patent #7,140,004 "Method and apparatus for zero-footprint phone application development." (2006)

U.S. Patent #6,107,696 "System and method for handling a voice prompted conversation." (2005)

U.S. Patent #6,606,598 "Statistical computing and reporting for interactive speech applications." (2003)

U.S. Patent #6,173,266 "System and method for developing interactive speech applications." (2001)

U.S. Patent #6,747,026 "Transcription and reporting system." (2000)

U.S. Patent #5,995,928 "Method and apparatus for continuous spelling speech recognition with early identification." (1999)

M. Marx and C. Schmandt. "CLUES: Dynamic Personalized Message Filtering." *Proceedings of the ACM Conference on Computer Supported Cooperative Work* (1996)

M. Marx and C. Schmandt. "MailCall: Message presentation and navigation in a non-visual environment." *Proceedings of the SIGCHI conference on Human Factors in Computing Systems* (1996)

N. Yankelovich, G.A. Levow, and M. Marx. "Designing SpeechActs: Issues in Speech User Interfaces." *Proceedings of the SIGCHI Conference on Human Factors in Computing Systems* (1995)

M. Marx and C. Schmandt. "Putting People First: Specifying Proper Names in Speech Interfaces." *Proceedings of the 7<sup>th</sup> annual ACM symposium of User Interface Software and Technology* (1994)

M. Marx and C. Schmandt. "Reliable Spelling Despite Unreliable Letter Recognition." *Proceedings of the American Voice Input/Output Society* (1994)

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#### **GOVERNMENT TESTIMONY**

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M. Marx. "Testimony regarding MA house Bill H1794, An Act Regarding Noncompetition Agreements." Massachusetts Joint Committee on Labor and Workforce Development, Boston MA, 15 September 2011.

M. Marx. "Testimony regarding MA House Bills H1794 and H1799, Acts Regarding Noncompetition Agreements." Massachusetts Joint Committee on Labor and Workforce Development, Boston MA, 7 October 2009.

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#### **TEACHING EXPERIENCE AND MATERIALS**

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15.394, Dilemmas in Founding New Ventures. Ratings were 4.9/5.0 and 4.7/5.0 for two sections taught Spring 2011. Overhauled prior syllabus and introduced simulation on firing employees, since adopted at Wharton and Harvard.

Frequent lecturer in executive education and the Trust Center for MIT Entrepreneurship.



Lee Fleming and Matt Marx. "Barry Riceman at NetD (A), (B), and (TN)." Harvard Business School Case 606-090.

#### **OTHER ACADEMIC EXPERIENCE AND SERVICE**

---

Guest Associate Editor for Management Science. Ad-hoc reviewer for Management Science, American Sociological Review, Review of Economics and Statistics, Journal of Law and Economics, Organization Science, Review of Industrial Organization, Research Policy, California Management Review, Journal of Business Venturing.

Organizing Committee, 2011 Harvard/MIT Strategy Research Conference.

MIT Sloan Undergraduate Program Committee, 2010-2013.

Organized MIT Sloan Behavioral and Policy Sciences Junior Faculty Retreat, 2010 and 2011.

#### **PRESENTATIONS**

---

Discussant/panelist

- OECD Symposium on "A Policy Framework for Knowledge-Based Capital." December 2012.
- Georgia Tech Roundtable on Engineering Entrepreneurship Research (REER) conference, November 2012.
- NBER Summer Institute Intellectual Property Policy and Innovation Workshop, July 2012
- Boston Bar Association Symposium on Employee Non-Compete Agreements, July 2012
- CCC Doctoral Student Conference, April 2012
- NBER Productivity, Innovation, and Entrepreneurship Working Group, March 2012
- Labor and Employment Relations Association Annual Meeting, January 2012
- Georgia Tech Roundtable on Engineering Entrepreneurship Research (REER) conference, September 2011
- Boston Bar Association Symposium on Employee Non-compete Agreements, July 2011
- NBER conference on Innovation Policy and the Economy. National Press Club, April 2011.
- Boston University Law School, March 2011
- Boston Bar Association Symposium on Employee Non-compete Agreements, July 2010

"Co-mobility"

- University of Chicago Junior Faculty Organization Theory Conference, October 2013.

"Technology Commercialization Strategy Dynamics and Entrepreneurial Performance: Evidence from the Speech Recognition Industry"

- University of Toronto Rotman School of Management Strategy Department Seminar, October 2013
- Industry Studies Association Annual Meeting, May 2013.
- Darden/Cambridge Entrepreneurship Conference, May 2013
- Duke Fuqua School of Business Strategy Conference, October 2012
- Carnegie Mellon University, SETChange department seminar series, October 2012
- West Coast Research Symposium, September 2012
- Academy of Management Annual Meeting, August 2012
- Queen's University Conference on the Economics of Innovation and Entrepreneurship, June 2012
- Atlanta Competitive Advantage Conference, May 2012
- London Business School Sumantra Ghoshal Conference, May 2012
- University of Chicago Organizations and Markets Department Seminar, April 2012
- The Wharton School Management Department Seminar, University of Pennsylvania, March 2012
- BYU-University of Utah Winter Strategy Conference, March 2012
- INFORMS annual meeting, November 2011
- Harvard Business School Strategy Conference, November 2011

"Patent Citations and the Geography of Knowledge Spillovers: Disentangling the Role of State Borders, Metropolitan Boundaries and Distance."

- London Business School, Strategy & Entrepreneurship Department, November 2012
- Georgia Tech Roundtable on Engineering Entrepreneurship Research (REER) conference, November 2012.
- Boston University Strategy & Innovation Department, August 2012
- Academy of Management Annual Meeting, August 2012
- Sloan Economic Sociology Working Group, July 2011

“The market valuation of strategic human capital: evidence from a natural experiment.”

- Stanford Organizational Behavior Department Seminar, October 2012
- Berkeley Innovation Seminar, April 2012

“Regional Disadvantage? Non-compete Enforcement and Brain Drain”

- UCLA Anderson Policy Group seminar, October 2011.
- Stanford Institute for Economic Policy Research seminar, October 2011
- The Wharton School, University of Pennsylvania Management Department seminar, October 2011
- Olin School, Washington University in St. Louis, Organizations Department seminar, October 2011
- Harvard Business School, Entrepreneurial Management Department seminar, September 2011
- European School of Management & Technology Department seminar, September 2011
- Mobility and Competition Clause Workshop, Ludwigs-Maximilian-Universitaet, August 2011
- Academy of Management Annual Meeting, August 2011
- University of Virginia Darden Entrepreneurship Conference, May 2011
- NBER Summer Institute, Technology Policy and the Economy, July 2010.
- University of Maryland Entrepreneurship Conference, April 2010
- Georgia Tech Roundtable for Engineering Entrepreneurship Research Conference, November 2009
- Technology Transfer Society Annual Meeting, October 2009
- HEC Workshop on Entrepreneurial Entry, September 2009
- Wharton Operations and Information Management Department seminar, September 2009
- Association of American Geographers Annual Meeting, April 2008
- NBER Productivity Lunch, September 2009.

“The Firm Strikes Back: Non-compete Agreements and the Mobility of Technical Professionals”

- American Sociological Association Annual Meeting, August 2010
- University of Oregon West Coast Research Symposium, August 2010
- Eastern Sociological Society annual meeting, March 2010
- NBER Entrepreneurship Working Group Summer Institute, July 2009
- Wharton People & Organizations Conference, June 2009
- Carnegie Mellon / Catholic University of Portugal Entrepreneurship Research conference, January 2009

“On a Short Leash: New Organizations, New Strategies, and Venture Capital”

- Academy of Management Meeting, August 2008

“Good Work If You Can Get It: Non-competes and Ex-employees.

- NBER Summer Institute Entrepreneurship working group, July 2009

“Mobility, Skills, and the Michigan Non-compete Experiment”

- CCC Doctoral Student Consortium, April 2008
- George Washington University Law School Department seminar, September 2007
- Academy of Management Annual Meeting, August 2007
- Wharton Technology Mini-Conference, April 2007
- NBER Productivity Lunch, November 2006

#### **MEDIA COVERAGE**

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"Tide turning against use of non-compete agreements in Mass." *Boston Business Journal*, August 2013.

"Set the Creators Free." *Wired Magazine*, December 2012.

"Marblehead state rep eyes non-compete agreements." *Marblehead Reporter*, 14 December 2011.

"Non-compete Laws Stifling Mass. High Tech Industry." *RadioBoston, WBUR*, 29 November 2011.

"[Governor] Patrick Threatens Enforcement Ban on Non-competes." *Boston Business Journal*, 16 September 2011.

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"Non-compete Clauses Stifling to Innovation in Mass." *Boston Globe*, 3 July 2011.

"Stop Enforcing Non-Competes." *Inc. Magazine*, 1 July 2010.

"Industry veterans share their dealings with non-compete agreements." *Mass High Tech*, 7 October 2009.

"Non-compete agreements hinder job switchers." *Wall Street Journal / FINS*, 10 August 2009.

"Non-compete clause changes are in the air again." *Mass High Tech*, 31 July 2009.

"Clause for Concern." *Boston Globe*, 10 July 2009.

"Start-ups stifled by non-competes." *Boston Globe*, 21 June 2009.

"I signed a non-compete, but now I want a new job." *CNNMoney*, 8 April 2009.

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# EXHIBIT E

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION  
4

5 IN RE: HIGH-TECH EMPLOYEE )  
6 ANTITRUST LITIGATION )  
7 ) No. 11-CV-2509-LHK  
8 THIS DOCUMENT RELATES TO: )  
9 ALL ACTIONS. )  
10 \_\_\_\_\_ )  
11

12 HIGHLY CONFIDENTIAL - FOR ATTORNEYS' EYES ONLY  
13

14 VIDEO DEPOSITION OF ALAN EUSTACE  
15

16 FEBRUARY 27, 2013  
17

18 Reported by: Mary Ann Scanlan-Stone, CSR No. 8875,  
19 RPR, CCRR, CLR  
20  
21  
22  
23  
24  
25

10:19:42 1 Q. And the next?

10:19:43 2 A. Otherwise known as DEC.

10:19:45 3 Q. Excuse me.

10:19:45 4 And the next one after that?

10:19:47 5 A. Google.

10:19:48 6 Q. Okay.

10:19:48 7 A. Not much of a job hopper.

10:19:53 8 Q. When did you start at Silicon Solutions?

10:19:56 9 A. It would be 1984.

10:20:03 10 Q. What title did you hold there when you

10:20:06 11 started?

10:20:06 12 A. Engineer.

10:20:07 13 Q. Did that change when you were there?

10:20:10 14 A. No.

10:20:10 15 Q. When did you start at Digital Equipment Corp?

10:20:14 16 A. 1986.

10:20:14 17 Q. What was your position there?

10:20:18 18 A. Research. Researcher or maybe member of the

10:20:21 19 technical staff, one of the two.

10:20:26 20 Q. When did you start at Google?

10:20:28 21 A. That would be 2002.

10:20:40 22 Q. How did you come to be employed by Google?

10:20:45 23 A. Digital had just gone through several

10:20:48 24 purchases. Compaq bought Digital and then HP bought

10:20:54 25 Compaq.

10:20:55 1 And at that time, my good friends who had left  
10:20:58 2 the lab that I was directing at the time and gone to  
10:21:03 3 Google asked me to reconsider because I had been turning  
10:21:08 4 them down for a long time and given that I was going to  
10:21:10 5 have to lay off people and given the fact that there was  
10:21:12 6 a lot of transition at HP, to reconsider Google, so I  
10:21:16 7 did.

10:21:16 8 Q. So your friends recruited you to come to  
10:21:19 9 Google?

10:21:19 10 A. That's correct.

10:21:21 11 Q. And what was your first title at Google?

10:21:28 12 A. Maybe director.

10:21:32 13 Probably director of research.

10:21:37 14 Q. Can you list for me the titles you've held at  
10:21:40 15 Google?

10:21:41 16 A. Director of research, probably just director,  
10:21:50 17 then vice president of engineering, and then senior vice  
10:21:53 18 president of engineering, and then senior vice president  
10:21:59 19 of knowledge, which is my current title.

10:22:03 20 Q. So you mentioned that you came to Google in  
10:22:09 21 2002. When did you go from director of research to  
10:22:13 22 director?

10:22:14 23 A. My title might have been -- I mean this was  
10:22:17 24 pretty early in the days of Google. My title might have  
10:22:19 25 been director all along. We weren't very title

13:34:48 1 with that company?

13:34:50 2 MR. RUBIN: Objection. Vague.

13:34:55 3 THE WITNESS: Yeah. I was in engineering. I  
13:34:57 4 do not know of a specific relationship with Genentech in  
13:35:00 5 engineering, although I don't know everything that was  
13:35:03 6 going on in the engineering organization, but I don't  
13:35:05 7 know of any specific things with Genentech.

13:35:09 8 MS. DERMODY: Okay.

13:35:09 9 Q. And that, I'm talking about 2005. Since 2005,  
13:35:11 10 are you aware of any business relationship, shared  
13:35:17 11 business relationship with Genentech and Google?

13:35:20 12 MR. RUBIN: Same objection. Vague.

13:35:30 13 THE WITNESS: I do not know. There may have  
13:35:31 14 been a relationship. We do a lot of work with machine  
13:35:36 15 learning and it's possible that there might have been  
13:35:39 16 some relationship in the drug discovery area and some  
13:35:42 17 discussions in machine learning, large scale data  
13:35:46 18 processing, large computational infrastructure with  
13:35:49 19 Genentech, but I was not a part of that.

13:35:53 20 There's a vague recollection that we were  
13:35:55 21 certainly interested in that area at one point but I do  
13:35:58 22 not know the timetable and I don't know whether we had  
13:36:01 23 specific discussions with them.

13:36:03 24 MS. DERMODY: Okay. Same question for Intel.

13:36:07 25 Q. So are you aware of any shared business



13:36:09 1 relationship with Intel since 2005?

13:36:12 2 A. Absolutely.

13:36:13 3 Q. Okay.

13:36:16 4 Describe for me in the 2005 era what shared  
13:36:19 5 business relationship you had?

13:36:21 6 A. They were our largest supplier. We had -- we  
13:36:29 7 obviously bought an incredible amount of their products.  
13:36:32 8 We used it for lots of our systems, along with AMD as  
13:36:37 9 well. Every system, every chip that they built, we  
13:36:40 10 tested. We have a strong partnership in testing with  
13:36:43 11 them.

13:36:43 12 We would get parts before everybody else did.  
13:36:48 13 We would -- we interacted very carefully with their  
13:36:52 14 architects, some of which came from Digital, so we had a  
13:36:56 15 strong, long-lasting relationship with their  
13:36:58 16 architectural organization.

13:37:00 17 And so our senior people would go to Intel and  
13:37:04 18 actually tell them the kinds of things that we expected  
13:37:07 19 out of our chips, what are the issues with performance.

13:37:10 20 We shared performance benchmarks between the  
13:37:13 21 companies and what kinds of things that we needed them  
13:37:15 22 to run fast on and why. We looked at future  
13:37:20 23 architectures. I mean, we had a very long relationship  
13:37:24 24 with them.

13:37:25 25 Q. Do you know if these, we will call them

15:39:20 1 I, Mary Ann Scanlan-Stone, Certified Shorthand  
15:39:20 2 Reporter licensed in the State of California, License  
15:39:20 3 No. 8875, hereby certify that the deponent was by me  
15:39:20 4 first duly sworn and the foregoing testimony was  
15:39:20 5 reported by me and was thereafter transcribed with  
15:39:20 6 computer-aided transcription; that the foregoing is a  
15:39:20 7 full, complete, and true record of said proceedings.

15:39:20 8 I further certify that I am not of counsel or  
15:39:20 9 attorney for either of any of the parties in the  
15:39:20 10 foregoing proceeding and caption named or in any way  
15:39:20 11 interested in the outcome of the cause in said caption.

15:39:20 12 The dismantling, unsealing, or unbinding of  
15:39:20 13 the original transcript will render the reporter's  
15:39:20 14 certificates null and void.

15:39:20 15 In witness whereof, I have hereunto set my  
15:39:20 16 hand this day: March 3, 2013.

15:39:20 17 \_\_\_\_\_ Reading and Signing was requested.

15:39:20 18 \_\_\_\_\_ Reading and Signing was waived.

15:39:20 19 \_\_\_X\_\_\_ Reading and signing was not requested.

15:39:20 20

15:39:20 21

15:39:20 22

15:39:22 23

24

25

\_\_\_\_\_  
MARY ANN SCANLAN-STONE

CSR 8875, RPR, CCRR, CLR



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April 23, 2013

Kelly Dermody, Esq.  
Lieff, Cabraser, Heimann & Bernstein  
275 Battery Street, 29<sup>th</sup> Floor  
San Francisco CA 94111

RE: HIGH-TECH EMPLOYEE ANTITRUST LITIGATION  
Case No. 11-CV-2509-LHK

Dear Ms. Dermody:

The original deposition of Alan Eustace, taken on February 27, 2013, has been subscribed to by the witness as provided under Rule 30 of the Federal Code. Errata sheet enclosed.

The original deposition has been sealed and is being forwarded to you per Rule 30(f)(1) of the Federal Code.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven T. Graham", with a stylized flourish at the end.

Steven T. Graham on behalf of  
Mary Ann Scanlan-Stone, CSR No. 8875, RPR, CCRR, CLR  
KRAMM COURT REPORTING

MAS/stg

Enclosures

cc: Lee H. Rubin, Esq.  
Amanda R. Conley, Esq.

**CORRECTIONS TO DEPOSITION TRANSCRIPT OF  
ALAN EUSTACE, DATED FEBRUARY 27, 2013**  
*In re High-Tech Employee Antitrust Litigation*  
*Case No. 11-CV-2509-LHK (N.D. Cal.)*

<b>Page:Line</b>	<b>Amendment</b>	<b>Reason for Amendment</b>
12:7	Replace: "I can recall" With: "I can't recall"	correction to transcript error
18:7	Replace: "and steady state" With: "and at its steady state"	correction to transcript error
18:9	Replace: "responsibilities to me" With: "responsibilities for me"	correction to transcript error
18:21	Replace: "VP -- VP of engineering but I was a VP in engineering and reported to the VP of engineering" With: "VP -- I was a VP in engineering and reported to the VP of engineering"	clarification
20:10	Replace: "needed done" With: "needed to be done"	correction to transcript error
22:6	Replace: "tell me what I thought" With: "tell him what I thought"	correction to transcript error
22:7	Replace: "merits of what other people were" With: "merits of what other people were doing"	correction to transcript error
27:12	Replace: "reported" With: "report"	correction to transcript error
27:15	Replace: "continued" With: "continues"	correction to transcript error

Page:Line	Amendment	Reason for Amendment
29:2	Replace: "it's is" With: "it is"	correction to transcript error
32:8	Replace: "with" With: "within"	correction to transcript error
37:25-38:1	Replace: "drift across different companies" With: "drift across different groups"	correction to transcript error
38:1	Replace: "companies" With: "groups"	correction to transcript error
40:22	Replace: "there have been" With: "there may have been"	correction to transcript error
64:3	Replace: "There's's" With: "There's"	correction to transcript error
66:15	Replace: "backup" With: "backend"	correction to transcript error
95:5	Replace: "Those companies" With: "Those people"	correction to transcript error
133:16	Replace: "what the correct bands would go" With: "what the correct bands would be"	correction to transcript error
139:5	Replace: "two" With: "II"	correction to transcript error
139:9	Replace: "two" With: "II"	correction to transcript error
139:14	Replace: "two"	correction to transcript error

Page:Line	Amendment	Reason for Amendment
	With: "II"	
142:6	Replace: "I'm not even near." With: "It's not very clear."	correction to transcript error
154:12	Delete: "but I think I really remember the stock grants"	correction to transcript error
167:5	Replace: "versions" With: "inversions"	correction to transcript error
178:2	Delete: "Brand"	correction to transcript error
180:3	Replace: "cache" With: "cachet"	correction to transcript error
192:7	Replace: "I changed" With: "a change"	correction to transcript error
194:9	Replace: "Crous" With: "Cos"	correction to transcript error

Subject to the above changes, I certify that the transcript is true and correct.

  
Signature

\_\_\_\_\_  
Date

# EXHIBIT F

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION  
4

5 IN RE: HIGH-TECH EMPLOYEE )  
6 ANTITRUST LITIGATION )  
7 ) No. 11-CV-2509-LHK  
8 THIS DOCUMENT RELATES TO: )  
9 ALL ACTIONS. )

10 \_\_\_\_\_

11  
12 VIDEO DEPOSITION OF OMID KORDESTANI  
13 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY  
14 March 11, 2013

15  
16 Reported by: Anne Torreano, CSR No. 10520  
17  
18  
19  
20  
21  
22  
23  
24  
25



1 Q. S-h-r --

2 A. S-h-r-i-r-a-m, Shriram.

3 Q. Shriram.

4 Okay. And then what happened next in terms of

10:14:56 5 being recruited by Google?

6 A. I met the founders, and we both liked each

7 other, and then I was brought in to meet the rest of

8 the company at the time, small group of people,

9 engineers primarily, and just went through that

10:15:13 10 process.

11 Q. Okay. And you started at Google in 1999?

12 A. Yes.

13 Q. Is that correct?

14 A. Yes.

10:15:19 15 Q. And what was your first position at Google?

16 A. I was the executive in charge of sales and

17 business development.

18 Q. And did you have a title at that time?

19 Director? Manager?

10:15:37 20 A. Vice president.

21 Q. And did that title change over time?

22 A. I think I became a senior vice president.

23 Q. And when was that?

24 A. I don't remember the exact date.

10:15:47 25 Q. Do you know the year?

1 A. Kind of middle of my tenure, I think.

2 Probably, you know, five years later or so. So  
3 probably 2004.

4 Q. Okay.

10:15:57 5 A. Roughly.

6 Q. And did your title change again?

7 A. No.

8 Q. Okay. And you said in 2009 that you stepped  
9 out from that role; is that correct?

10:16:09 10 A. Yes.

11 Q. Okay. Tell me what happened in 2009.

12 A. I just kind of was ready to take a break. I'd  
13 never taken a long break.

14 Q. And what has been your relationship to Google  
10:16:28 15 since 2009?

16 A. Just a friendly one, you know. I'm friendly  
17 with the founders and CEO, and I visit the company  
18 maybe once a month for a lunch meeting. And, you know,  
19 sometimes if an opportunity comes up where I introduce  
10:16:48 20 a candidate to the company for hiring or -- I introduce  
21 a company that, you know, may be interested in a  
22 relationship with Google. That's the relationship.

23 Q. Okay. And are you employed elsewhere or have  
24 you been employed elsewhere since 2009?

10:17:06 25 A. No. I just accepted a board position at

1 THE WITNESS: Vendee? I've never heard that  
2 before.

3 BY MS. DERMODY:

4 Q. You bought -- you bought what they were  
12:10:34 5 selling.

6 A. I understand that part. I understand what  
7 that means, but, like, are you saying outside of that  
8 could there have been any other relationship?

9 Q. Yes. Are you aware -- are you personally  
12:10:41 10 aware of any other business collaboration between  
11 Google and Intel between 2005 and 2009?

12 MR. RUBIN: Objection. Form.

13 THE WITNESS: To me, business collaboration  
14 means like we seek advice of Paul Otellini, for  
12:10:53 15 example, on a broad range of topics. He was a board  
16 member, and we talked about everything from China to  
17 sales force structuring. You know, he didn't put on --  
18 as I said, facilities and just large-scale kind of  
19 problems that we were running into as the company was  
12:11:14 20 becoming larger and larger. A lot of valuable input  
21 from these executives.

22 BY MS. DERMODY:

23 Q. Okay. So other than Mr. Otellini's advice as  
24 a board member and Google's role in purchasing chips  
12:11:27 25 from Intel, are you aware of any other business

1 collaboration between Intel and Google between 2005 and  
2 2009?

3 MR. RUBIN: Objection. Form.

4 THE WITNESS: As I mentioned before, there was  
12:11:38 5 a lot of touch points within these companies. So I  
6 don't recall the specifics, but the syndication group  
7 may have had a relationship with them around  
8 distribution. The product group may have had  
9 relationship with them. I don't recall them, you  
12:11:51 10 know.

11 BY MS. DERMODY:

12 Q. Okay. Let's talk about Apple.

13 In 2005, what was the partnership with Apple?

14 MR. RUBIN: Objection. Form.

12:12:07 15 THE WITNESS: I don't recall exactly the  
16 specific partnership at the time.

17 BY MS. DERMODY:

18 Q. Okay. Did you -- do you have a recollection  
19 of any partnership with Apple in the 2005 to 2009 time  
12:12:23 20 period?

21 A. Yes, there were -- there were a lot of  
22 different discussions. During that time I know there  
23 were -- again, we were talking to them about including  
24 search functionality in their browser, Google search  
12:12:36 25 functionality syndication in effect. We were -- they

## REPORTER'S CERTIFICATE

I, Anne Torreano, Certified Shorthand Reporter licensed in the State of California, License No. 10520, hereby certify that the deponent was by me first duly sworn, and the foregoing testimony was reported by me and was thereafter transcribed with computer-aided transcription; that the foregoing is a full, complete, and true record of said proceedings.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing proceeding and caption named or in any way interested in the outcome of the cause in said caption.

The dismantling, unsealing, or unbinding of the original transcript will render the reporter's certificates null and void.

In witness whereof, I have subscribed my name this 21ST day of March, 2012.

☐ Reading and Signing was requested.

☐ Reading and Signing was waived.

☒ Reading and Signing was not requested.

\_\_\_\_\_  
ANNE M. TORREANO, CSR No. 10520



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June 3, 2013

Kelly M. Dermody, Esq.  
Lieff, Cabraser, Heimann & Bernstein  
275 Battery Street  
San Francisco, CA 94111

RE: HIGH-TECH EMPLOYEE ANTITRUST LITIGATION  
Case No. 11-CV-2509-LHK

Dear Ms. Dermody:

The original deposition of Omid Kordestani, taken on March 11, 2013, has been subscribed to by the witness as provided under Rule 30 of the Federal Code. Copy of errata sheet enclosed.

The original deposition has been sealed and is being forwarded to you per Rule 30(f)(1) of the Federal Code.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven T. Graham".

Steven T. Graham on behalf of  
Anne Torreano, CSR No. 10520  
KRAMM COURT REPORTING

AT/stg

Enclosures

cc: Lee H. Rubin, Esq.

**CORRECTIONS TO DEPOSITION TRANSCRIPT OF  
OMID KORDESTANI, DATED MARCH 11, 2013**

*In re High-Tech Employee Antitrust Litigation  
Case No. 11-CV-2509-LHK (N.D. Cal.)*

<b>Page:Line</b>	<b>Amendment</b>	<b>Reason for Amendment</b>
11:10	Replace: "e-mail backgrounds" With: "background e-mails"	correction to transcript error
11:13	Replace: "again, reviewed it" With: "again, I reviewed it"	correction to transcript error
14:24	Replace: "2009 I" With: "In 2009 I"	correction to transcript error
18:3	Replace: "Vodaphone in U.K." With: "Vodafone in the U.K."	correction to transcript error
18:5	Replace: "That first" With: "That the first"	correction to transcript error
20:18	Replace: "It" With: "They"	correction to transcript error
23:13	Replace: "So general" With: "So a general"	correction to transcript error
24:9	Replace: "comes" With: "came"	correction to transcript error
31:3	Replace: "kind of" With: "sometimes"	correction to transcript error
32:23	Replace: "staff meeting – with" With: "staff, meeting with"	correction to transcript error

<b>Page:Line</b>	<b>Amendment</b>	<b>Reason for Amendment</b>
34:21	Replace: "was" With: "were"	correction to transcript error
42:19-20	Replace: "Eric Givens" With: "Eric Schmidt"	correction to transcript error
44:3	Replace: "has" With: "had"	correction to transcript error
44:9	Replace: "come" With: "came"	correction to transcript error
44:9	Replace: "make" With: "made"	correction to transcript error
45:22	Delete: "it"	correction to transcript error
47:3	Replace: "2005 frame" With: "2005 time frame"	correction to transcript error
48:2	Replace: "at" With: "by"	correction to transcript error
48:13	Replace: "They were like" With: "What they were like"	correction to transcript error
48:15	Replace: "they be." With: "they be?"	correction to transcript error
51:2	Replace: "packets of hiring" With: "hiring packets"	correction to transcript error
54:3	Delete: "what"	correction to transcript error



<b>Page:Line</b>	<b>Amendment</b>	<b>Reason for Amendment</b>
54:9	Replace: "on me" With: "from me"	correction to transcript error
60:5	Replace: "in both" With: "in including both"	correction to transcript error
61:10	Replace: "was" With: "were"	correction to transcript error
61:11	Replace: "wasn't" With: "weren't"	correction to transcript error
65:11	Replace: "terms" With: "term"	correction to transcript error
80:10	Replace: "was" With: "were"	correction to transcript error
81:20	Replace: "where" With: "who"	correction to transcript error
82:2	Delete: "from"	correction to transcript error
83:23	Replace: "facilities questions" With: "facilities – questions"	correction to transcript error
87:4	Replace: "was" With: "were"	correction to transcript error
93:2	Replace: "is" With: "was"	correction to transcript error
94:18	Replace: "that" With: "where"	correction to transcript error

<b>Page:Line</b>	<b>Amendment</b>	<b>Reason for Amendment</b>
94:21	Replace: "say"  With: "said"	correction to transcript error
95:9	Replace: "also distributor of, let's say, toolbar"  With: "distributor of, let's say, our toolbar"	correction to transcript error
95:11	Replace: "complaints"  With: "complained"	correction to transcript error
111:18	Replace: "can"  With: "could"	correction to transcript error
113:16	Replace: "was"  With: "as"	correction to transcript error
131:18	Replace: "was"  With: "were"	correction to transcript error
131:22	Replace: "the"  With: "a"	correction to transcript error
139:14	Replace: "has it"  With: "that"	correction to transcript error
143:14	Replace: "my advice"  With: "my advice on"	correction to transcript error

<b>Page:Line</b>	<b>Amendment</b>	<b>Reason for Amendment</b>
147:7	Replace: "can"  With: "could"	correction to transcript error
147:20	Replace: "was"  With: "were"	correction to transcript error
148:18	Replace: "were after"  With: "were going after"	correction to transcript error
149:10	Replace: "was"  With: "were"	correction to transcript error
154: 21	Replace: "aware what"  With: "aware of what"	correction to transcript error
160:11	Replace: "with the"  With: "about a"	correction to transcript error
167:24	Delete: "maybe"	correction to transcript error
170:12	Delete: "Google"	correction to transcript error

Subject to the above changes, I certify that the transcript is true and correct.

Signature

A handwritten signature in black ink, consisting of a stylized 'K' or 'F' shape, written over a horizontal line.

Date

A handwritten date '5/6/13' in black ink, written over a horizontal line.

# EXHIBIT G

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE )  
ANTITRUST LITIGATION )  
 ) No. 11-CV-2509-LHK  
THIS DOCUMENT RELATES TO: )  
ALL ACTIONS. )  
\_\_\_\_\_ )

HIGHLY CONFIDENTIAL - FOR ATTORNEYS' EYES ONLY

VIDEO DEPOSITION OF ERIC SCHMIDT

FEBRUARY 20, 2013

Reported by: Rosalie A. Kramm, CSR No. 5469, CRR

10:40:14 1 come to an end?

10:40:16 2 A. 1997.

10:40:16 3 Q. And then where did you go, sir?

10:40:18 4 A. Novell as the CEO.

10:40:20 5 Q. And when were you with Novell?

10:40:22 6 A. 1997 until 2001.

10:40:24 7 Q. And then where did you go in 2001?

10:40:26 8 A. Came here to Google.

10:40:28 9 Q. And what was your initial position with Google?

10:40:32 10 A. It's complicated. I came in as chairman for

10:40:36 11 two months, and then I became CEO for ten years. And I

10:40:43 12 was chairman on and off a bunch of times.

10:40:45 13 Q. All right. Were you on the board of directors

10:40:47 14 throughout that time period?

10:40:48 15 A. Yes, I was.

10:40:49 16 Q. And what is your current position at Google?

10:40:52 17 A. I'm now the executive chairman and member of

10:40:54 18 the board of Google.

10:40:56 19 Q. What is the executive chairman position?

10:40:59 20 A. Whatever I'd like it to be.

10:41:04 21 Q. And -- all right, sir.

10:41:06 22 Do you have an understanding as to what the

10:41:08 23 lawsuit that we're here is all about?

10:41:10 24 A. I do.

10:41:10 25 Q. What is your understanding of the claims that

12:16:28 1 BY MR. HEIMANN:

12:16:41 2 Q. Again, to Exhibit 561, that's the email from  
12:16:47 3 Ms. Brown, Genentech is a company that is identified as  
12:16:53 4 one of the three companies for this special arrangement.

12:16:57 5 Why?

12:16:58 6 A. I have no -- I don't specifically recall the  
12:17:00 7 conversation, as I said. But I would observe that  
12:17:04 8 Genentech, Intel, and Apple -- that Genentech and Intel  
12:17:10 9 had board members that were board members of Google, and  
12:17:13 10 Genentech was -- Art Levinson was the CEO of Genentech.  
12:17:18 11 Paul Otellini was the CEO of Intel. And Apple, of  
12:17:22 12 course, I eventually got on their board, and Bill  
12:17:23 13 Campbell was a board member of Apple.

12:17:26 14 So, again, my feeling would be -- I don't  
12:17:29 15 precisely remember, would be that this was related -- and  
12:17:33 16 I vaguely remember saying that we did not want a  
12:17:37 17 situation where you had a sitting board member and we  
12:17:40 18 were cold calling into their companies.

12:17:43 19 Q. Now, at what level is that speculation and at  
12:17:47 20 what level is that an actual memory of the reason for the  
12:17:51 21 agreement with respect to Genentech?

12:17:53 22 A. It's vague enough I can't give you a precise  
12:17:56 23 answer, but I think it's probably true.

12:17:58 24 Q. Was there any other reason you can think of for  
12:18:00 25 Genentech being the subject of this agreement?



12:18:03 1 A. No, and I don't recall us hiring from  
12:18:07 2 Genentech. So --  
12:18:09 3 Q. So the answer is, no, there isn't any other  
12:18:11 4 reason that you can think of.  
12:18:12 5 A. That's fine.  
12:18:13 6 Q. All right. How about with respect to Intel?  
12:18:15 7 Was there any other reason that you can think of, other  
12:18:17 8 than the director situation?  
12:18:21 9 A. Well, with Intel we -- Intel has a deep, deep  
12:18:25 10 partnership with -- had and has a deep, deep partnership  
12:18:28 11 with Google at many, many levels, technical levels. So  
12:18:31 12 that would be the -- that would be a good reason.  
12:18:33 13 Q. Was it the reason at the time?  
12:18:35 14 A. As I -- as I indicated I have a vague  
12:18:38 15 recollection that it was -- it was Paul Otellini being on  
12:18:42 16 the board. I would have also added the deep  
12:18:46 17 collaboration between the companies.  
12:18:48 18 Q. And do you recall any discussion of that at the  
12:18:49 19 EMG meeting with respect to Intel?  
12:18:51 20 A. As I indicated, I don't recall the specifics of  
12:18:54 21 the discussion.  
12:18:55 22 Q. And the agreement with respect to Genentech was  
12:18:58 23 company-wide, was it?  
12:18:59 24 A. It would --  
12:19:00 25 MR. RUBIN: Objection. Vague.

12:22:38 1 Q. Did the board of directors approve it?

12:22:41 2 MR. RUBIN: Objection. Asked and answered.

12:22:44 3 THE WITNESS: As I indicated, I have no  
12:22:45 4 recollection of such a discussion. However, it would not  
12:22:48 5 have been -- it would not have required a board of  
12:22:50 6 directors approval.

12:22:51 7 BY MR. HEIMANN:

12:22:53 8 Q. Do you know whether or not there is any  
12:22:56 9 discussion in the minutes of any meeting of the board of  
12:22:58 10 directors?

12:23:00 11 A. I do not.

12:23:08 12 Q. Is it something of sufficient importance that  
12:23:11 13 you think in all likelihood it would have been presented  
12:23:13 14 to the board?

12:23:14 15 MR. RUBIN: Objection. Asked and answered.

12:23:16 16 THE WITNESS: I think it's unlikely it would  
12:23:18 17 have been presented to the board.

12:23:19 18 BY MR. HEIMANN:

12:23:20 19 Q. Why do you say that?

12:23:21 20 A. We were working on more important things.

12:23:32 21 Q. I'll ask you to take a look at Exhibit 640.

12:23:59 22 This is a somewhat lengthy document. I have  
12:24:01 23 got one page and one section I'm going to focus on, but  
12:24:06 24 you should at least take enough time to -- to familiarize  
12:24:09 25 yourself with the document generally, and -- because what

14:02:39 1 for speculation; lacks foundation based on prior  
14:02:42 2 testimony.

14:02:48 3 THE WITNESS: As I previously said, we set the  
14:02:50 4 policy based on what we thought was the right way to  
14:02:53 5 treat these partners. I have no memory of ever  
14:02:58 6 discussing Intel's policy.

14:03:00 7 BY MR. HEIMANN:

14:03:01 8 Q. Did Google tell these companies what Google's  
14:03:05 9 policy was?

14:03:06 10 A. I'm sure I spoke with Paul about this at some  
14:03:09 11 point.

14:03:10 12 Q. And you don't have any recollection of him  
14:03:12 13 assuring you that Intel's practices and policies with  
14:03:15 14 Google was the same as Google's was to Intel; is that  
14:03:20 15 right?

14:03:20 16 A. That's correct. It's also -- it's important to  
14:03:22 17 understand that it's at -- these situations are  
14:03:24 18 asymmetric because at the time in question Google was  
14:03:28 19 growing very, very dramatically, and so we were certainly  
14:03:34 20 hiring lots of people from the Valley; whereas the other  
14:03:36 21 companies might not have been in such a growth phase. So  
14:03:40 22 they're not -- they're not symmetric relationships.

14:03:43 23 Q. And how does that relate to the question about  
14:03:44 24 whether or not the agreements were reciprocal?

14:03:46 25 A. Well, they don't have to be reciprocal to be

16:41:10 1 I, Rosalie A. Kramm, Certified Shorthand  
16:41:10 2 Reporter licensed in the State of California, License No.  
16:41:10 3 5469, hereby certify that the deponent was by me first  
16:41:10 4 duly sworn and the foregoing testimony was reported by me  
16:41:10 5 and was thereafter transcribed with computer-aided  
16:41:10 6 transcription; that the foregoing is a full, complete,  
16:41:10 7 and true record of said proceedings.

16:41:10 8 I further certify that I am not of counsel or  
16:41:10 9 attorney for either of any of the parties in the  
16:41:10 10 foregoing proceeding and caption named or in any way  
16:41:10 11 interested in the outcome of the cause in said caption.

16:41:10 12 The dismantling, unsealing, or unbinding of the  
16:41:10 13 original transcript will render the reporter's  
16:41:10 14 certificates null and void.

16:41:10 15 In witness whereof, I have hereunto set my hand  
16:41:10 16 this day: February 23, 2013.

16:41:10 17   X   Reading and Signing was requested.

16:41:10 18            Reading and Signing was waived.

16:41:10 19            Reading and signing was not requested.

16:41:10 20

16:41:10 21

16:41:10 22

\_\_\_\_\_  
ROSALIE A. KRAMM

16:41:10 23

CSR 5469, RPR, CRR

16:41:10 24

25



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August 1, 2013

Richard Heimann, Esq.  
Lieff, Cabraser, Heimann & Bernstein  
275 Battery Street, 29<sup>th</sup> Floor  
San Francisco CA 94111

RE: HIGH-TECH EMPLOYEE ANTITRUST LITIGATION  
Case No. 11-CV-2509-LHK

Dear Mr. Heimann:

The original deposition of Eric Schmidt, taken on February 20, 2013, has been subscribed to by the witness as provided under Rule 30 of the Federal Code. Copy of errata sheet enclosed.

The original deposition has been sealed and is being forwarded to you per Rule 30(f)(1) of the Federal Code.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven T. Graham", with a long, sweeping horizontal stroke extending to the right.

Steven T. Graham on behalf of  
Rosalie A. Kramm, CSR No. 5469, CRR  
KRAMM COURT REPORTING

RAK/stg

Enclosures

cc: Christina Brown, Esq.  
Frank M. Hinman, Esq.  
Lee H. Rubin, Esq.  
Robert A. Mittelstaedt, Esq.

Page Line

16 12

Change: Change "properties" to "documents"

Reason: typographical error

39 10

Change: Change "would be tried" to "would try"

Reason: typographical error

48 19

Change: Change "recognition" to "recollection"

Reason: typographical error

145 18

Change: Change "It's" to "That"

Reason: typographical error

146 5

Change: Delete "A,"

Reason: typographical error

208 12

Change: Change "2000" to "2010"

Reason: typographical error


215 11

Change: Change "Federal Trade Commission" to "Department of Justice"

Reason: correction

☒ Subject to the above changes, I certify that the transcript is true and correct.

☐ No changes have been made. I certify that the transcript is true and correct.

  
\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

# EXHIBIT H

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE )  
ANTITRUST LITIGATION )  
 ) No. 11-CV-2509-LHK  
THIS DOCUMENT RELATES TO: )  
ALL ACTIONS. )  
\_\_\_\_\_ )

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEO DEPOSITION OF SERGEY BRIN

MARCH 19, 2013

Reported by: Rosalie A. Kramm, CSR No. 5469, CRR



10:07:19 1 head. I understand that it's related to a certain amount  
10:07:20 2 of solicitation of employees which Google and other  
10:07:21 3 companies did not do over, you know, a number of years  
10:07:23 4 ago.

10:07:24 5 Q. All right. Have you reviewed what's called the  
10:07:25 6 complaint in this case?

10:07:25 7 A. No, I have not.

10:07:26 8 Q. Have you reviewed any of the expert reports  
10:07:27 9 that have been submitted in the case?

10:07:28 10 A. No, I have not.

10:07:28 11 Q. Have you reviewed any of the other filings that  
10:07:29 12 have been made by the various parties to the Court?

10:07:30 13 A. I -- look, I think we have a very capable legal  
10:07:32 14 team, and outside counsel, so I trust them with legal  
10:07:33 15 matters. So, no.

10:07:34 16 Q. So the answer is, no, you haven't reviewed any  
10:07:35 17 of those files?

10:07:35 18 A. I have not.

10:07:36 19 Q. All right.

10:07:36 20 A. It's also outside my job. I mean at the -- you  
10:07:38 21 know, years ago, I was more involved in executive  
10:07:39 22 matters. My current position is at Google X, which is  
10:07:40 23 kind of like our Skunkworks.

10:07:41 24 Q. Why don't you elaborate on that. What do you  
10:07:42 25 mean by your Skunkworks?

10:07:43 1 A. It's a small group that does basically advanced  
10:07:44 2 research and development.

10:07:45 3 Q. And when did you transit into that aspect of  
10:07:46 4 the company?

10:07:47 5 A. It's probably been about three years.

10:07:48 6 Q. So roughly in 2010 or thereabouts?

10:07:49 7 A. Yes. About 2010, yeah.

10:07:50 8 Q. Prior to that can you describe your role at the  
10:07:51 9 company?

10:07:51 10 A. Prior to that, Larry, Larry Page, Eric Schmidt,  
10:07:52 11 and myself kind of divided the top-level executives  
10:07:54 12 running the company, and our roles fluctuated a bit over  
10:07:55 13 time. But, you know, in recent years I would -- it would  
10:07:57 14 not be normal for me to be involved in legal matters, for  
10:07:58 15 example.

10:07:58 16 Q. Okay. Can you be any more specific about how  
10:07:59 17 the roles were divided up among the three of you prior to  
10:08:01 18 the time that you went into the research and development  
10:08:02 19 phase of the company?

10:08:03 20 A. You know, we -- we always had a very good  
10:08:04 21 partnership, first Larry and myself, and then we brought  
10:08:05 22 Eric in, and we overlapped on a number of things, but  
10:08:07 23 ultimately there is just so much work we ended up kind of  
10:08:08 24 each would take on a portion, and it fluctuated over the  
10:08:10 25 years. We didn't typically have very strict dividing

11:21:15 1 now, it's possible there might have been a handful, but  
11:21:18 2 I'm not aware of any examples.

11:21:32 3 Q. Was Google's board of directors informed of the  
11:21:38 4 communications with Jobs at Apple about this topic?

11:21:44 5 A. My recollection, which was refreshed based on  
11:21:49 6 looking at emails recently, is that we decided, you know,  
11:21:53 7 in order not to, you know, agitate Steve further, that we  
11:21:58 8 wouldn't make such unsolicited calls into his -- into  
11:22:03 9 Apple's employees.

11:22:04 10 We felt that we should think, you know, are  
11:22:05 11 there other companies where we also don't wish to, you  
11:22:09 12 know, needlessly aggravate the executives, and I believe  
11:22:12 13 that Genentech was an example, and Art Levinson was on  
11:22:18 14 our board, and so was Intel, and Paul Otellini was on our  
11:22:23 15 board. So I'm sure that we would have mentioned it to at  
11:22:29 16 least those board members, probably might as well the  
11:22:32 17 whole board.

11:22:33 18 Q. Did the board of directors approve the policy?

11:22:38 19 A. I don't recall there being, you know, sort of  
11:22:42 20 any kind of official approval by the board.

11:22:47 21 Q. You say "official approval." I didn't ask  
11:22:50 22 about official approval. I asked about approval.

11:22:52 23 A. I don't recall --

11:22:53 24 MR. RUBIN: Objection to form.

11:22:54 25 THE WITNESS: I don't recall a board approval.

11:22:56 1 BY MR. HEIMANN:

11:23:07 2 Q. All right. Let's take a look at Exhibit 640.

11:23:34 3 By the way, you mentioned Intel and Genentech a  
11:23:38 4 moment ago.

11:23:39 5 A. Correct.

11:23:40 6 Q. Was the arrangement over recruiting reciprocal  
11:23:44 7 with those two companies?

11:23:45 8 MR. RUBIN: Objection. Form.

11:23:51 9 THE WITNESS: Yeah, first -- the arrangement.

11:23:52 10 BY MR. HEIMANN:

11:23:52 11 Q. I'm sorry to interrupt you. I'm trying to  
11:23:55 12 search for a neutral term we can use.

11:23:57 13 A. I mean I think that -- I don't think it would  
11:23:58 14 have mattered to us whether they, you know, recruited  
11:24:03 15 directly, whether they would recruit directly out of  
11:24:06 16 Google or solicit. I don't think it would have mattered  
11:24:12 17 to us one way or the other.

11:24:14 18 Q. All right. Whether it would have mattered or  
11:24:16 19 not, was the understanding reciprocal with -- let's start  
11:24:19 20 with Intel.

11:24:21 21 MR. RUBIN: Objection. Form.

11:24:22 22 THE WITNESS: I -- I don't recall. If it had  
11:24:26 23 been reciprocal, it would have been just as a matter of  
11:24:29 24 politeness.

25 //

11:24:30 1 BY MR. HEIMANN:

11:24:31 2 Q. Politeness on Intel's part? Is that what you  
11:24:34 3 mean?

11:24:35 4 A. Politeness on Intel's part or on our part,  
11:24:38 5 even, to pretend to care.

11:24:41 6 Q. How about with respect to Genentech, then?

11:24:44 7 A. Once again, I -- actually with respect to  
11:24:47 8 Genentech, it probably would be better if, you know, if  
11:24:50 9 there was some great person, maybe they should get into  
11:24:54 10 Genentech, you know, working on cures for cancer and  
11:24:57 11 things like that. I think it's -- you know, that's one  
11:25:00 12 reason why I feel it would be good for us to not solicit  
11:25:04 13 needlessly out of Genentech, because I wouldn't want to  
11:25:08 14 disrupt that work, and it's, you know, very unrelated to  
11:25:12 15 what we do.

11:25:15 16 So anyhow, I -- I don't think it would have  
11:25:19 17 mattered to us.

11:25:20 18 Q. I understand you don't think it would have  
11:25:22 19 mattered, but the question is whether it would have  
11:25:24 20 mattered or not to us, was the understanding or  
11:25:26 21 arrangement reciprocal with Genentech so that Genentech  
11:25:31 22 also took the position that they wouldn't be recruiting  
11:25:33 23 out of Google?

11:25:34 24 A. I -- look, I wasn't in those conversations. I  
11:25:37 25 couldn't tell you. I could tell you that in my mind, I

11:25:40 1 never worried about what Genentech or Intel or Apple --

11:25:45 2 whether they were or were not recruiting aggressively out

11:25:50 3 of Google.

11:25:51 4 Q. When you say you weren't in those

11:25:52 5 conversations, what conversations are you referring to?

11:25:54 6 A. I'm not sure there -- in whatever way it may

11:25:57 7 have been relayed to those companies, which maybe it

11:25:59 8 wasn't at all, that wasn't -- I did not do that. Like I

11:26:05 9 didn't talk to Art, at least as near as I can recall.

11:26:23 10 By the way, did you want me to review this

11:26:26 11 or --

11:26:27 12 Q. Is that Exhibit 640?

11:26:30 13 MR. RUBIN: Exhibit 640.

11:26:31 14 BY MR. HEIMANN:

11:26:31 15 Q. Yes -- yes, I do. I want to ask you generally

11:26:33 16 what it is, if you can tell us, and then I'm going to ask

11:26:35 17 you specifically about the last page.

11:26:38 18 A. Okay.

11:29:37 19 Q. I don't mean to rush you, but --

11:29:39 20 A. Yeah.

11:29:39 21 Q. -- I don't have any specific questions about

11:29:41 22 it, other than what is it, if you can tell us, and then I

11:29:43 23 have a question or two about the text on the last page.

11:29:46 24 A. Oh, okay. Do you want me to review the last

11:29:48 25 page?

1 I, Rosalie A. Kramm, Certified Shorthand  
2 Reporter licensed in the State of California, License No.  
3 5469, hereby certify that the deponent was by me first  
4 duly sworn and the foregoing testimony was reported by me  
5 and was thereafter transcribed with computer-aided  
6 transcription; that the foregoing is a full, complete,  
7 and true record of said proceedings.

8 I further certify that I am not of counsel or  
9 attorney for either of any of the parties in the  
10 foregoing proceeding and caption named or in any way  
11 interested in the outcome of the cause in said caption.

12 The dismantling, unsealing, or unbinding of the  
13 original transcript will render the reporter's  
14 certificates null and void.

15 In witness whereof, I have hereunto set my hand  
16 this day: March 30, 2013.

17 \_\_\_X\_\_\_ Reading and Signing was requested.

18 \_\_\_\_\_ Reading and Signing was waived.

19 \_\_\_\_\_ Reading and signing was not requested.

20

21

22

\_\_\_\_\_  
ROSALIE A. KRAMM

23

CSR 5469, RPR, CRR

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25



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May 6, 2013

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San Francisco CA 94111

RE: HIGH-TECH EMPLOYEE ANTITRUST LITIGATION  
Case No. 11-CV-2509-LHK

Dear Mr. Heimann:

The original deposition of Sergey Brin, taken on March 19, 2013, has been subscribed to by the witness as provided under Rule 30 of the Federal Code. Errata sheet enclosed.

The original deposition has been sealed and is being forwarded to you per Rule 30(f)(1) of the Federal Code.

Sincerely,

Steven T. Graham on behalf of  
Rosalie A. Kramm, CSR No. 5469, CRR  
KRAMM COURT REPORTING

RAK/stg

Enclosures

cc: Amanda R. Conley, Esq.  
Frank M. Hinman, Esq.  
Jennifer T. Lorch, Esq.  
Rowan T. Mason, Esq.

SAN FRANCISCO	
Calendar and Court Services	
Received: May 8, 2013	
c/m#	0000355568
Dates to be Entered	
Ø	
The attorney, whose initials appear below, has reviewed the applicable court rules, and has verified that the above dates are correct.	
Atty: _____	
Date Processed:	5/8
Received via: Mail/InBox/Fax/ECF	
or Other _____	
Routed to:	F. Hinman
Processed by:	VIRAY



**CORRECTIONS TO DEPOSITION TRANSCRIPT OF  
SERGEY BRIN, DATED MARCH 19, 2013**

*In re High-Tech Employee Antitrust Litigation*

*Case No. 11-CV-2509-LHK (N.D. Cal.)*

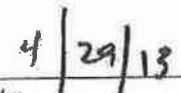
<b>Page:Line</b>	<b>Amendment</b>	<b>Reason for Amendment</b>
12:13	Insert "claims" after the word "complicated"	correction to transcript error
14:23	Replace: "is" With: "was"	correction to transcript error
20:5	Insert "a" after the word "that's"	correction to transcript error
25:25— 26:1	Replace: "and not very significant maintaining that relationship"  With: "and it was not very significant to maintain that relationship"	correction and clarification
32:7	Replace: "employees." With: "employees?"	correction to transcript error
35:12	Replace: "expensively" With: "extensively"	correction to transcript error
37:16-17	Replace: "taking a lot of metaphor" With: "using a metaphor"	correction and clarification
40:13	Replace: "spoken" With: "spoke"	correction to transcript error
42:21	Replace: "lives" With: "lived"	correction to transcript error
45:4	Replace: "at—you know," With: "with, you know, the"	correction and clarification

<b>Page:Line</b>	<b>Amendment</b>	<b>Reason for Amendment</b>
61:6	Insert "days" after the phrase "those two"	correction and clarification
61:12	Replace: "exactly" With: "exact"	correction to transcript error
63:10	Insert "that" after the word "indicate"	correction to transcript error
64:1	Insert "that" after the word "mind"	correction to transcript error
65:5	Replace: ", and I --" With: "in"	correction and clarification
65:20	Replace: "other some" With: "some other"	correction to transcript error
69:1	Delete "the"	correction to transcript error
70:2	Replace: "is" With: "in"	correction to transcript error
73:5	Replace: "things" With: "ways"	correction and clarification
74:16	Replace: "probably might as well the whole board" With: "probably might have as well to the whole board"	correction and clarification
95:23	Replace: "manage" With: "imagine"	correction to transcript error
108:3	Insert "a" before the phrase "fairly special circumstance"	correction to transcript error
131:9	Replace: "Ever this group"	correction and

Page:Line	Amendment	Reason for Amendment
	With: "Ever? This group"	clarification
143:14	Replace: "relatively overlap in skillset" With: "relatively overlapping in skillsets"	correction and clarification
165:12	Replace: "GNA" With: "G & A"	correction to transcript error
165:13	Replace: "restriction" With: "restrictions"	correction to transcript error
190:10	Replace: "flowerful" With: "flowery"	correction to transcript error
202:12	Replace: "county" With: "country"	correction to transcript error
205:8	Delete "The"	correction to transcript error

Subject to the above changes, I certify that the transcript is true and correct.

  
Signature

  
Date

# EXHIBIT I

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION  
4  
5

6 IN RE: HIGH-TECH EMPLOYEE )  
7 ANTITRUST LITIGATION )  
8 ) No. 11-CV-2509-LHK  
9 THIS DOCUMENT RELATES TO: )  
10 ALL ACTIONS. )  
11 \_\_\_\_\_ )  
12  
13

14 CONFIDENTIAL - ATTORNEYS' EYES ONLY  
15 VIDEO DEPOSITION OF PAUL OTELLINI  
16 January 29, 2013  
17  
18

19 REPORTED BY: GINA V. CARBONE, CSR NO. 8249, RPR, CCRR  
20  
21  
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24  
25

09:09:00 1 A. Yes.

09:09:01 2 Q. Is it fair to say that you've had your  
09:09:03 3 deposition taken on several occasions?

09:09:05 4 A. Yes.

09:09:06 5 Q. And so I take it, then, that you are generally  
09:09:08 6 familiar with the process?

09:09:11 7 A. Every one has been different, but yes.

09:09:13 8 Q. But you understand that I'll be asking you some  
09:09:15 9 questions today and I'll be asking you to answer those  
09:09:18 10 questions?

09:09:18 11 A. Yes.

09:09:19 12 Q. And if you don't understand my questions,  
09:09:21 13 please let me know that and I'll do my best to rephrase  
09:09:23 14 them. Do you understand that?

09:09:24 15 A. Yes.

09:09:32 16 Q. What's your current job title?

09:09:35 17 A. I'm president and CEO of Intel Corporation.

09:09:38 18 Q. And when did you assume that position or those  
09:09:41 19 positions?

09:09:42 20 A. In -- the CEO part of it in May of 2005.

09:09:47 21 Q. And, I'm sorry, what was the other part of it?

09:09:49 22 A. President.

09:09:49 23 Q. And when did you assume the role of president,  
09:09:51 24 at Intel?

09:09:52 25 A. I became president and chief operating officer

09:09:56 1 four or five years prior to that.

09:09:59 2 Q. Prior to 2005?

09:10:00 3 A. Yes.

09:10:01 4 Q. So is it fair to say you became president and  
09:10:04 5 COO in 2000 or 2001, something in there?

09:10:15 6 A. I think so.

09:10:16 7 Q. And when you were president and COO, who did  
09:10:23 8 you report to?

09:10:25 9 A. I reported to Dr. Craig Barrett.

09:10:28 10 Q. I'm sorry, could you say that again?

09:10:30 11 A. Dr. Craig Barrett, B-A-R-R-E-T-T.

09:10:33 12 Q. And was Mr. Barrett the CEO of Intel at the  
09:10:36 13 time?

09:10:37 14 A. Until 2005, yes.

09:10:39 15 Q. And when you became CEO in 2005, did you  
09:10:44 16 succeed Mr. Barrett?

09:10:46 17 A. Yes.

09:10:48 18 Q. And to whom do you report as CEO?

09:10:51 19 A. I report to the board of directors.

09:10:54 20 Q. Of Intel?

09:10:55 21 A. Yes.

09:10:56 22 Q. And when you became CEO, did Mr. Barrett become  
09:11:08 23 the chairman of the Intel board of directors?

09:11:10 24 A. Yes, he did.

09:11:12 25 Q. And how long did Mr. Barrett serve as the

09:15:29 1 Q. Have you -- other than the audit and the -- the  
09:15:32 2 audit committee and the LDCC, have you served on other  
09:15:36 3 committees or subcommittees of the Google board?

09:15:38 4 A. I was on a special committee. I served on a  
09:15:40 5 special committee on the board that was involved in  
09:15:46 6 examining the background of the recapitalization project  
09:15:52 7 proposal for the firm.

09:15:55 8 Q. And when you say "for the firm," you mean for  
09:15:57 9 Google?

09:15:58 10 A. For Google.

09:16:02 11 Q. When did you begin serving on -- strike that.

09:16:06 12 When did you begin to serve as a director at  
09:16:10 13 Google?

09:16:13 14 A. In early 2003.

09:16:15 15 Q. Okay. And when did you serve on the audit  
09:16:22 16 committee of Google?

09:16:23 17 A. I think I went onto the audit committee  
09:16:26 18 immediately. And I was on the audit committee for  
09:16:28 19 perhaps one or two years.

09:16:31 20 Q. When did you begin to serve on the LDCC?

09:16:34 21 A. After I transitioned from audit.

09:16:38 22 Q. So is it fair to say when you got off of the  
09:16:40 23 audit committee you joined the LDCC?

09:16:42 24 A. Yeah. That's common practice is to rotate  
09:16:45 25 directors among the committees.



10:38:00 1 A. I deny that there was an agreement between  
10:38:03 2 Intel and -- any knowledge of an agreement between Intel  
10:38:05 3 and Google that reflected bilateral nonsolicitation.

10:38:09 4 Q. And so you deny that you were one of the  
10:38:12 5 senior -- strike that.

10:38:13 6 So you deny that you are a senior executive at  
10:38:17 7 Intel who entered an express agreement with Google?

10:38:22 8 A. As I said, I entered an express agreement with  
10:38:25 9 Eric at Google on a specific set of conditions that was  
10:38:31 10 not bilateral.

10:38:32 11 Q. And when you say "not bilateral," what do you  
10:38:34 12 mean?

10:38:35 13 A. I asked him to refrain from soliciting  
10:38:39 14 employees that Intel had assigned to work at Google on  
10:38:42 15 joint collaborative projects.

10:38:46 16 Q. And when you say not bilateral -- well, there  
10:38:47 17 were two sides to that discussion, right?

10:38:49 18 A. No.

10:38:51 19 Q. What did Mr. -- did Mr. Schmidt agree to  
10:38:54 20 anything?

10:38:55 21 A. Yes. He said yes. It was a fair request.

10:38:59 22 Q. Okay. Now, in the next paragraph it says, in  
10:39:17 23 the second line, "The agreements are facially  
10:39:21 24 anticompetitive because they eliminated a significant  
10:39:23 25 form of competition to attract high-tech employees, and

10:53:21 1 the person who ran our corporate services site selection  
10:53:29 2 process.

10:53:30 3 Q. And who was that second person?

10:53:31 4 A. I don't remember his name at the time.

10:53:33 5 Q. Was it a man or a woman?

10:53:34 6 A. A man.

10:53:41 7 Q. And Renee James is a woman, correct?

10:53:45 8 A. Yes.

10:53:46 9 Q. And when Ms. James informed you of that  
10:53:49 10 incident, did you contact Mr. Schmidt to tell him about  
10:53:53 11 that?

10:53:53 12 A. I think I sent him an email.

10:53:55 13 Q. And why did you send him the email?

10:53:59 14 A. Because I wanted to remind him that it was --  
10:54:01 15 that he was recruiting people that were working on these  
10:54:04 16 joint projects and this was -- this was, I thought, not  
10:54:08 17 in the spirit of our agreement.

10:54:10 18 Q. Is it fair to say that when you -- when you  
10:54:12 19 contacted him or wrote him the email, you wanted  
10:54:15 20 Mr. Schmidt to stop it?

10:54:17 21 A. Yeah. I would prefer he didn't do that. Live  
10:54:20 22 up to what he said, yes.

10:54:22 23 Q. Okay. And I'm sorry, the second incident that  
10:54:32 24 you described, the person was a manager of -- I didn't  
10:54:36 25 get the name of the -- the organization.

10:54:38 1 A. It was -- we have an organization called  
10:54:40 2 corporate services, which has all of our construction  
10:54:43 3 and land and construction activities, site selection,  
10:54:50 4 et cetera.

10:54:52 5 And the background for that was that Google was  
10:54:56 6 in the midst of a large physical expansion of their  
10:55:01 7 sites for data centers and R&D, and they wanted to know  
10:55:06 8 Intel practices. So I offered to send over the person  
10:55:09 9 who did that for Intel. Was a very experienced  
10:55:14 10 engineer. And we told them how we went about selecting  
10:55:17 11 and growing sites. And they liked that person so much  
10:55:26 12 they recruited him, which I didn't think was terribly  
10:55:29 13 fair and kind.

10:55:29 14 Q. And you contacted Mr. Schmidt to express that;  
10:55:31 15 is that fair?

10:55:32 16 A. Yes, I did.

10:55:33 17 Q. And again, when you did that, you wanted  
10:55:37 18 Mr. Schmidt to stop it?

10:55:39 19 A. I wanted him to not disrupt kind of the joint  
10:55:45 20 efforts. What would be my incentive to help Google if  
10:55:49 21 when I send people over there they recruit our best  
10:55:51 22 people.

10:55:52 23 Q. So other than those two incidents, can you  
10:55:54 24 recall any other incident where you learned that Google  
10:55:58 25 wasn't living up to its agreement with you?

10:56:01 1 A. In the engineering ones and the facility ones?

10:56:03 2 Q. You say ones. I believe you said there were

10:56:06 3 two incidents, one where you found out from Ms. James --

10:56:09 4 A. There were three. There was the initial one,

10:56:11 5 and then there was a -- in software and compiler and

10:56:19 6 tools activities, and the second one in the same area.

10:56:23 7 And then there was a latter one in the corporate

10:56:28 8 services area.

10:56:29 9 Q. And to the best of your recollection, those

10:56:31 10 were the three incidents?

10:56:33 11 A. Yes.

10:56:49 12 Q. Do you recall when you first -- strike that.

10:57:02 13 When did you and -- when did Mr. -- let me back

10:57:13 14 up.

10:57:14 15 Just focusing on the first incident that gave

10:57:16 16 rise to the first set of communications, do you recall

10:57:19 17 approximately when that was?

10:57:23 18 A. It was spring 2006, probably.

10:57:25 19 Q. And at that time, were you the Intel CEO?

10:57:29 20 A. Yes, I was.

10:57:30 21 Q. And at that time, were you on the Google board?

10:57:32 22 A. Yes, I was.

10:57:35 23 Q. And when did Mr. Schmidt agree?

10:57:50 24 A. When I called him.

10:57:52 25 Q. Okay. And was that agreement effective from

11:07:01 1 Apple-Intel --

11:07:01 2 Q. Sir, I'm glad you did it. I thought it was  
11:07:04 3 only me.

11:07:05 4 A. When the original Apple-Intel design win  
11:07:08 5 happened, I was with Steve for several months, you know,  
11:07:11 6 several times a week over several months for working on  
11:07:16 7 the agreement. And then we went into implementation  
11:07:19 8 mode and we managed the business and, you know, on a  
11:07:21 9 quarterly basis with executive meetings.

11:07:24 10 Q. During that period of time when you were  
11:07:26 11 speaking more frequently with Mr. Jobs, did you discuss  
11:07:28 12 the subject of recruiting or soliciting each other's  
11:07:36 13 employees?

11:07:37 14 A. No.

11:07:37 15 Q. The subject never came up?

11:07:39 16 A. No.

11:07:39 17 Q. Did he ever tell you at any time that he had  
11:07:42 18 reached agreements with executives at other technology  
11:07:46 19 companies not to recruit each other's employees?

11:07:48 20 A. No.

11:08:08 21 Q. Now, going back for a second, again, to the  
11:08:11 22 agreement between you and Mr. Schmidt, can you identify  
11:08:15 23 any collaboration between Intel and Google that occurred  
11:08:20 24 after that point in time that wouldn't have happened  
11:08:23 25 absent the agreement between Google and Intel?

11:08:30 1 MR. PICKETT: No foundation. Objection.

11:08:33 2 THE WITNESS: Does that mean I answer?

11:08:34 3 MR. PICKETT: You can try. But let's read the  
11:08:36 4 question back.

11:08:37 5 MR. SAVERI: I'm sorry. Why don't you read the  
11:08:39 6 question back.

11:08:39 7 And I'd like an answer, please.

11:08:56 8 (Record read as follows: Now, going back for a  
11:08:56 9 second again to the agreement between you and  
11:08:56 10 Mr. Schmidt, can you identify any collaboration  
11:08:56 11 between Intel and Google that occurred after  
11:08:56 12 that point in time that wouldn't have happened  
11:08:56 13 absent the agreement between Google and Intel?)

11:08:58 14 THE WITNESS: As I think about the agreements,  
11:09:02 15 so the collaboration, we had one in the data center, we  
11:09:05 16 had one in data center efficiency, we had one in search  
11:09:11 17 optimization, we had one around Google TV, we had one  
11:09:15 18 around Android, one around Chrome, Chrome OS. All of  
11:09:23 19 those -- all of those happened. It's speculative to say  
11:09:28 20 I don't know that anything would not have happened in  
11:09:30 21 the absence of the agreement.

11:09:33 22 But, you know, the companies were working well  
11:09:36 23 together and were engaged broadly in a wide array of  
11:09:43 24 projects as I delineated.

11:09:44 25 MR. SAVERI: Q. Now, prior to 2006 when

11:09:47 1 you entered the agreement with Mr. Schmidt, had --  
11:09:50 2 or strike that.

11:09:53 3 Prior to the time that you had reached the  
11:09:55 4 agreement with Mr. Schmidt in 2006, had Google and Intel  
11:10:00 5 collaborated on certain projects?

11:10:03 6 A. Well, we -- I can't remember when the data  
11:10:06 7 center optimization work started, which is what led to  
11:10:10 8 the first instance. It may have been in 2005, but I  
11:10:15 9 doubt in the 2003-04 time frame that it existed.  
11:10:20 10 Nothing that I can recall before, say, late '05.

11:10:25 11 Q. And just so I'm clear about your testimony, was  
11:10:28 12 the first collaboration, then, this data center in late  
11:10:32 13 2005? When I say collaboration, I mean collaboration  
11:10:35 14 between Intel and Google.

11:10:36 15 A. Obviously Google was using Intel parts for  
11:10:39 16 their data centers. Intel was designing the -- designed  
11:10:43 17 boards for the data centers in the early days for them  
11:10:45 18 and before the IPO. I don't know that we had on-site  
11:10:54 19 engineers, which is really what the genesis of the  
11:10:57 20 original incident was.

11:11:00 21 Q. Now, you said in your answer a few minutes ago  
11:11:03 22 that you had a collaboration -- when I say you, I'm  
11:11:06 23 saying -- I mean Intel. That you said that Intel had a  
11:11:10 24 collaboration between Google and Intel regarding search  
11:11:14 25 optimization; do you recall that?

11:11:15 1

A. Yes.

11:11:16 2

Q. When did that collaboration begin?

11:11:20 3

A. It was certainly in effect in early '06. I

11:11:22 4

can't give you the time when it began. And that was

11:11:25 5

around tuning -- helping them tune their software to run

11:11:30 6

faster on the new generation of Intel chips.

11:11:38 7

Q. In terms of Intel's structure, who was the

11:11:42 8

person at Intel that was responsible for that search

11:11:46 9

optimization collaboration?

11:11:49 10

A. Well, the work involved Intel experts in

11:11:52 11

microprocessor architecture, in compilers and in

11:11:57 12

optimization tools. And those activities at that time

11:12:05 13

spanned a number of Intel executives.

11:12:08 14

Q. Can you identify the one or two or three

11:12:11 15

people?

11:12:12 16

A. Well, on the processor architecture it would

11:12:18 17

have been under Pat Gelsinger. Under the compilers it

11:12:23 18

would have been Richard Wirt. And under the -- and the

11:12:30 19

tools, I think were under Renee James at the time.

11:12:34 20

Q. Now, you also mentioned a collaboration between

11:12:38 21

Google and Intel regarding Google TV, I believe; is that

11:12:42 22

correct?

11:12:42 23

A. Yes, I did.

11:12:43 24

Q. And when did that collaboration begin?

11:12:53 25

A. I can't give you -- Google TV was launched, I



11:12:56 1 think, in 2010. So probably began a year before that.

11:13:07 2 Q. And who, at Intel, was responsible for that  
11:13:10 3 collaboration?

11:13:14 4 A. It was under a gentleman who is no longer with  
11:13:16 5 us named Eric Kim.

11:13:19 6 Q. And how long did that collaboration last?

11:13:23 7 A. Probably two years.

11:13:26 8 Q. And you also mentioned that there was  
11:13:29 9 collaboration about -- around Android, Chrome,

11:13:34 10 Chrome OS. Do you recall --

11:13:37 11 A. Three separate topics.

11:13:38 12 Q. And that was my question. When did the  
11:13:40 13 collaboration around Android begin?

11:13:43 14 A. Several years ago.

11:13:45 15 Q. Was it before or after the agreement with  
11:13:47 16 Mr. Schmidt?

11:13:49 17 A. Several years ago, so...

11:13:53 18 Q. Who at Intel was responsible for that  
11:13:55 19 collaboration?

11:13:56 20 A. I'm sorry, which one are we talking about now?

11:13:59 21 Q. I'm sorry. The Android.

11:14:01 22 A. Android would be under Renee James.

11:14:03 23 Q. You also mentioned, I think the second, was a  
11:14:05 24 collaboration regarding Chrome; do you recall that?

11:14:09 25 A. Chrome browser, yes. Under Renee as well.

11:14:11 1 Q. When did that begin? That collaboration?

11:14:13 2 A. Before the Android one so maybe four years ago.

11:14:16 3 Q. And you also mentioned Chrome OS, which is a

11:14:19 4 different one than the Chrome browser, correct?

11:14:21 5 A. Right. It's an operating system.

11:14:23 6 Q. Right.

11:14:24 7 A. And that was -- it would also be under Renee,

11:14:25 8 and that was probably in the last two or three years as

11:14:29 9 well.

11:14:29 10 MR. SAVERI: Okay. So it's -- can we go off

11:14:35 11 the record for a second?

11:14:38 12 THE VIDEOGRAPHER: This is the end of video

11:14:39 13 No. 1. We are now off the record at 11:14.

11:14:50 14 (Recess taken.)

11:16:59 15 THE VIDEOGRAPHER: We are now on the record at

11:29:09 16 11:29. This is the beginning of video No. 2.

11:29:14 17 MR. SAVERI: Q. Going back for a second to

11:29:16 18 your first communication with Mr. Schmidt about the

11:29:20 19 agreement that we've been talking about. Was there

11:29:24 20 someone at Intel who told you that Google was

11:29:29 21 recruiting Intel employees that caused you to call

11:29:33 22 Mr. Schmidt?

11:29:33 23 A. Yes.

11:29:34 24 Q. And who was that?

11:29:36 25 A. It was either Richard Wirt or Renee. I can't

12:47:19 1 A. Yes.

12:47:19 2 Q. Was this the first occasion that you contacted  
12:47:23 3 Mr. Schmidt to enforce the agreement that you had  
12:47:29 4 reached with him?

12:47:31 5 A. Well, yes. This is -- the only other  
12:47:34 6 conversation on this topic was to get his agreement that  
12:47:38 7 he would do this. So yes, it was the first time.

12:47:41 8 Q. Yeah, and I was just trying to nail down the  
12:47:43 9 sequence. So it's your best recollection that this was  
12:47:45 10 the first time you had occasion to contact Mr. Schmidt  
12:47:49 11 about the agreement after the time when you first  
12:47:51 12 reached the agreement?

12:47:53 13 A. I think so.

12:47:59 14 Q. Now, do you recall what projects or what area  
12:48:03 15 at Intel the software employees that you referred to  
12:48:07 16 here worked in?

12:48:08 17 A. Yes. They were the compiler and tools team.  
12:48:11 18 The same people that were working on the Google software  
12:48:14 19 optimization. That project continued for several  
12:48:17 20 quarters.

12:48:24 21 Q. Now, at the beginning of your email to Eric  
12:48:27 22 Schmidt you write, "Sorry to bother you again on this  
12:48:30 23 topic."

12:48:30 24 Do you see that?

12:48:31 25 A. Yes.

01:16:39 1 MR. SAVERI: Thank you. You can put that  
01:16:40 2 aside.

01:16:42 3 (Whereupon, Exhibit 454 was marked for  
01:16:42 4 identification.)

01:17:10 5 MR. SAVERI: Q. Mr. Otellini, I've handed  
01:17:12 6 you what's been marked as Exhibit 454. It has the  
01:17:15 7 Bates No. 76616DOC003892.

01:17:22 8 Do you have that in front of you?

01:17:23 9 A. Yes, I do.

01:17:26 10 Q. Do you recognize this document?

01:17:27 11 A. I do.

01:17:28 12 Q. Could you tell me what it is, please.

01:17:31 13 A. It's a chain of emails that starts out with an  
01:17:35 14 organization announcement of an employee leaving. The  
01:17:38 15 next part of the chain is one of the managers of that  
01:17:42 16 organization sending me a note saying that the leaving  
01:17:45 17 employee is joining Google, and pointing out that the --  
01:17:50 18 his belief is that the -- it was a direct result of  
01:17:56 19 Intel helping Google by presenting to them how we do our  
01:18:01 20 site selection program that enticed them to take the  
01:18:04 21 guy.

01:18:05 22 And then, you know, the email goes on to say  
01:18:08 23 this was part of the request, and it ends with me  
01:18:11 24 sending it to -- a note to Eric at Google saying it  
01:18:15 25 seems unkind to hire the guy that we sent to help you.

01:18:19 1 Q. Now, did you write -- just focusing on the top  
01:18:23 2 of the email, did you write the email to Mr. Schmidt on  
01:18:26 3 or about the date that's indicated there?

01:18:28 4 A. Yes.

01:18:29 5 Q. July (sic) 3rd, 2007.

01:18:30 6 A. I did.

01:18:31 7 Q. Now, is this the incident regarding the site  
01:18:37 8 selection person that you discussed with me a little bit  
01:18:40 9 earlier today?

01:18:40 10 A. Yes, it is.

01:18:59 11 Q. Now, you write, "Eric, please see below and do  
01:19:03 12 not forward within Goog."

01:19:05 13 Do you see that?

01:19:05 14 A. Yes.

01:19:06 15 Q. Why didn't you want Mr. Schmidt to forward this  
01:19:09 16 message within Google?

01:19:10 17 A. Because I didn't want to make a federal case of  
01:19:12 18 it. I just thought it was terribly unkind. They asked  
01:19:16 19 us to help them, we sent a guy over there who was our  
01:19:20 20 best guy, showed them how we're doing it. He's a  
01:19:23 21 tenured employee, valued employee, and they hired him  
01:19:26 22 away. I didn't think it was the best way to get me to  
01:19:29 23 want to help them anymore.

01:19:33 24 Q. Again, this communication occurred after your  
01:19:37 25 original communication with Mr. Schmidt --

02:50:07 1 A. I don't know where I was at 1:45 a.m., but I  
02:50:09 2 wrote it.

02:50:13 3 Q. During this time, did you use a BlackBerry or  
02:50:16 4 some kind of PDA?

02:50:19 5 A. I had a BlackBerry then. This was on a PC. I  
02:50:23 6 was likely --

02:50:23 7 Q. How can you tell that?

02:50:25 8 A. Because of the font.

02:50:26 9 Q. Okay.

02:50:28 10 A. And I was probably traveling, so this could be  
02:50:30 11 a different time zone.

02:50:32 12 Q. And do you recognize this font that's in this  
02:50:35 13 email as one you ordinarily used?

02:50:37 14 A. Yeah. And I set it that way so I can see my  
02:50:40 15 stuff quickly as an old blind guy.

02:50:43 16 Q. My condolences. I feel your pain.

02:50:47 17 Now, let me ask you, at this time what projects  
02:51:13 18 with Google was Ms. James' organization collaborating  
02:51:19 19 on?

02:51:20 20 A. This was still part of the continuous effort on  
02:51:24 21 compilers, on code optimization, on tuning, on porting  
02:51:29 22 to new generations of Intel products, on adding  
02:51:32 23 capabilities into their Google software, on taking  
02:51:36 24 advantage of new instructions that we're adding to the  
02:51:40 25 microprocessors.

03:12:49 1 A. Yes.

03:12:51 2 Q. Upon your joining the Google board, did you  
03:12:59 3 immediately suggest collaborations between the two  
03:13:02 4 companies?

03:13:03 5 A. Probably. I know they were a relatively small  
03:13:07 6 customer, but growing. But I'd also met with Google  
03:13:11 7 prior to my being on the board several times.

03:13:14 8 Q. Okay. Were there particular collaborations  
03:13:17 9 that you suggested immediately upon joining the Google  
03:13:20 10 board?

03:13:21 11 A. I may have. I don't know.

03:13:22 12 Q. And is it --

03:13:23 13 A. I remember that they wanted to tap into our  
03:13:26 14 knowledge on how we scaled our company up, and they  
03:13:30 15 wanted information from our finance teams and HR teams,  
03:13:35 16 maybe the legal team as well, on just how companies  
03:13:38 17 grow. And we made our experts in those areas available  
03:13:43 18 to them.

03:13:44 19 In terms of engineering, I know there was work,  
03:13:47 20 because we talked about it this morning, in the '05 time  
03:13:50 21 frame about the software collaboration. And in the time  
03:13:54 22 frame '03 to '05, we were -- most of the engineering  
03:13:58 23 collaboration was around building motherboards for them  
03:14:02 24 to run their data centers.

03:14:04 25 Q. And to the best of your recollection, was the

03:14:06 1 collaboration during that 2003/2005 period limited to  
03:14:10 2 the work done in connection with the motherboards for  
03:14:13 3 data centers?

03:14:14 4 A. Well, in addition to the other stuff I just  
03:14:17 5 talked about in terms of how do companies grow, what are  
03:14:20 6 your systems like. Google was a startup, still, and  
03:14:24 7 trying to figure out how to become a global company.

03:14:34 8 Q. When did you begin discussing customized energy  
03:14:42 9 efficient chips that you believed Intel could --

03:14:46 10 A. Wasn't energy efficient chips, per se, it was  
03:14:48 11 energy efficient data centers so it was not just the  
03:14:51 12 chips. Went beyond that. That started out in the '05  
03:14:54 13 time frame and came to fruition with announcement  
03:14:58 14 probably '06, '07, '08 time frame on the -- energy  
03:15:05 15 savers? I can't remember the name.

03:15:07 16 Q. Climate Savers?

03:15:09 17 A. Climate Savers. Thank you.

03:15:10 18 Do you have the date on that?

03:15:11 19 Q. No, I don't. That's why I was asking.

03:15:16 20 A. Yeah. It's in the probably '06, '07, '08  
03:15:21 21 window.

03:15:22 22 Q. Did Google and Intel collaborate in connection  
03:15:37 23 with a company called Clearwire?

03:15:40 24 A. We each invested in Clearwire, along with other  
03:15:43 25 companies.



03:15:46 1 Q. How much did Intel invest in Clearwire?

03:15:49 2 A. Well, we invested in several tranches, but it

03:15:52 3 was a little over a billion dollars.

03:15:54 4 Q. And how much did Google invest?

03:15:56 5 A. Less. Five-, 600.

03:16:00 6 Q. And how much of the company did Intel control

03:16:03 7 as a result of that?

03:16:04 8 A. I don't know. Not the majority. Less than 25

03:16:07 9 percent.

03:16:14 10 Q. How many Intel -- well, so Intel invested about

03:16:18 11 a billion dollars in Clearwire, correct?

03:16:20 12 A. Over several tranches, yes.

03:16:23 13 Q. How many Intel employees worked on or

03:16:27 14 collaborated with Clearwire?

03:16:32 15 A. Well, Clearwire was a network company. So, I

03:16:35 16 mean, thousands -- they were building a network based

03:16:38 17 upon WiMAX, a new technology at the time. And we had

03:16:43 18 thousands of engineers working on WiMAX that were

03:16:47 19 building essentially chips that would run on the

03:16:49 20 Clearwire network and others around the world. We had

03:16:52 21 WiMAX investments in probably 25 countries.

03:16:57 22 Q. Now, what role did Google have in developing

03:17:05 23 WiMAX?

03:17:06 24 A. In developing WiMAX, very little. They

03:17:09 25 certainly supported Clearwire. It's in Google's

03:17:11 1 interest to have broadband. And this was wireless  
03:17:17 2 broadband network.

03:17:21 3 Q. But maybe my -- the answer got lost in that  
03:17:27 4 answer. How -- can you -- how much did Google  
03:17:37 5 contribute to this effort that Intel was undertaking  
03:17:43 6 with respect to the WiMAX network and Clearwire?

03:17:47 7 A. In terms of developing the technology, none. I  
03:17:50 8 mean, none or a trivial amount. In terms of supporting  
03:17:56 9 the network build-out, a substantial amount of cash.

03:18:05 10 Q. When you say a substantial amount of cash you  
03:18:07 11 are referring to their investment in Clearwire?

03:18:10 12 A. Investment. Yes.

03:18:20 13 Q. What was the -- can you describe the nature of  
03:18:27 14 the collaboration between Intel and Google in connection  
03:18:30 15 with incorporating Google video into the V-I-I-V or --

03:18:38 16 A. Viiv.

03:18:40 17 Q. -- Viiv?

03:18:41 18 A. Generally. Viiv was a product that we -- a  
03:18:45 19 version of a PC that was intended for the living room,  
03:18:48 20 played on a PC screen or your big screen. And Google  
03:18:54 21 had Google Video and what became YouTube, as they ended  
03:18:59 22 up consummating that purchase, that they wanted to make  
03:19:01 23 sure it got into formats that would be adaptable to  
03:19:06 24 large screen viewing.

03:19:07 25 So we did work around compression for data

03:19:13 1 transfer efficiency. Resolution for high definition,  
03:19:18 2 codec for audio and so forth, that would allow their  
03:19:22 3 video to play seamlessly on these products that we were  
03:19:27 4 developing.

03:19:29 5 Q. How much did Google contribute to that  
03:19:30 6 collaboration?

03:19:31 7 A. In terms of?

03:19:33 8 Q. What was their contribution to that  
03:19:36 9 collaboration?

03:19:37 10 A. Engineering, access to source code,  
03:19:40 11 collaborative engineering, they would modify their code,  
03:19:42 12 we would tell them what they needed to do to work on our  
03:19:44 13 systems.

03:19:45 14 Q. How many people at Intel worked on that  
03:19:47 15 project?

03:19:48 16 A. On Viiv?

03:19:49 17 Q. Yeah.

03:19:52 18 A. North of 700, less than a thousand.

03:19:55 19 (Whereupon, Exhibit 463 was marked for  
03:19:55 20 identification.)

03:20:42 21 MR. SAVERI: Q. I've handed you what's  
03:20:42 22 been marked as Exhibit 463, has the Bates  
03:20:46 23 No. 76614DOC023625 through 626.

03:20:56 24 The top of the document is an email from an  
03:21:00 25 Ogden Reid to Patty Murray. I just want to draw your

04:00:35 1 would I --

04:00:36 2 Q. That's a fair question.

04:00:37 3 Did you ever -- did you ever, at any time,

04:00:45 4 complain to Steve Jobs that Apple had recruited any

04:00:55 5 Intel employee?

04:00:56 6 A. Not that I remember. Even when he hired my

04:01:04 7 general counsel.

04:01:32 8 (Whereupon, Exhibit 467 was marked for

04:01:32 9 identification.)

04:01:50 10 MR. SAVERI: Q. I've handed you what's

04:01:54 11 been marked as Exhibit 467. It has the numbers

04:01:57 12 GOOG-HIGH-TECH-00256893 to 899 (sic).

04:02:03 13 Take a moment to read it, please.

04:02:17 14 A. There is a lot of stuff here.

04:02:19 15 Q. I apologize for that.

04:02:20 16 MR. PICKETT: Is there a particular portion

04:02:22 17 that you --

04:02:22 18 MR. SAVERI: Q. I'm going to ask you --

04:02:24 19 let me just direct you to a couple things, sir. If

04:02:27 20 you look at the bottom of page 2, there is an email

04:02:30 21 from Laszlo Bock to yourself, and I think it's

04:02:36 22 Mr. Levinson at Genentech.

04:02:38 23 A. It is.

04:02:40 24 Q. And then there is a portion of an email that

04:02:44 25 starts on the bottom of the first page from Shona Brown

1 I, Gina V. Carbone, Certified Shorthand  
2 Reporter licensed in the State of California, License  
3 No. 8249, hereby certify that the deponent was by me  
4 first duly sworn and the foregoing testimony was  
5 reported by me and was thereafter transcribed with  
6 computer-aided transcription; that the foregoing is a  
7 full, complete, and true record of said proceedings.

8 I further certify that I am not of counsel or  
9 attorney for either of any of the parties in the  
10 foregoing proceeding and caption named or in any way  
11 interested in the outcome of the cause in said caption.

12 The dismantling, unsealing, or unbinding of  
13 the original transcript will render the reporter's  
14 certificates null and void.

15 In witness whereof, I have hereunto set my  
16 hand this day: February 1, 2013.

17 \_\_\_\_\_ Reading and Signing was requested.

18 \_\_\_\_\_ Reading and Signing was waived.

19 \_\_\_X\_\_\_ Reading and signing was not requested.

20

21

22

23

\_\_\_\_\_  
GINA V. CARBONE

24

CSR 8249, RPR, CCRR

25



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April 1, 2013

Joseph R. Saveri, Esq.  
Joseph Saveri Law Firm  
505 Montgomery Street, Suite 625  
San Francisco CA 94111

RE: HIGH-TECH EMPLOYEE ANTITRUST LITIGATION  
Case No. 11-CV-2509-LHK

Dear Mr. Saveri:

The original deposition of Paul Otellini, taken on January 29, 2013, has been subscribed to by the witness as provided under Rule 30 of the Federal Code. Errata sheet enclosed.

The original deposition has been sealed and is being forwarded to you per Rule 30(f)(1) of the Federal Code.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven T. Graham", with a long, sweeping horizontal stroke extending to the right.

Steven T. Graham on behalf of  
Gina V. Carbone, CSR No. 8249, RPR, CCRR  
KRAMM COURT REPORTING

GVC/stg

Enclosures

cc: Donn P. Pickett, Esq.  
Lee H. Rubin, Esq.  
Catherine T. Zeng, Esq.

**CORRECTIONS TO DEPOSITION TRANSCRIPT OF  
PAUL OTELLINI, DATED JANUARY 29, 2013**

*In re High-Tech Employee Antitrust Litigation  
Case No. 11-CV-2509-LHK (N.D. Cal.)*

<b>Page:Line</b>	<b>Amendment</b>	<b>Reason for Amendment</b>
32:18	Replace: "of cherry-picking" With: "to allow Facebook to cherry-pick"	correction
33:17	Replace: "is" With: "are"	clarification
33:24	Replace: "is" With: "are"	clarification
35:11	Replace: "The trough" With: "That"	correction
46:4	Replace: "limiting on recruiting or limiting" With: "limit on recruiting or limit"	clarification
46:12-13	Replace: "Intel had an agreement - Intel had" With: "Google had"	correction
46:14	Replace: "Google" With: "Intel"	correction
75:1	Replace: "In the" With: "Other than the"	clarification
75:4-5	Replace: "one, and then there was a -- in software" With: "one in software"	clarification
75:6	Replace: "the second one" With: "another one"	clarification
75:7	Replace: "a latter one" With: "a separate one"	clarification



82:6	Replace: "months for working" With: "months working"	clarification
83:15	Replace: "collaboration" With: "collaborations"	clarification
84:7	Replace: "optimization" With: "efficiency"	correction
105:4	Replace: "this is conditions" With: "these are conditions"	clarification
105:5	Replace: "allowed." With: "allowed?"	clarification
120:24	Replace: "you and I at the Intel office" With: "at the Intel office"	correction
121:16	Replace: "them" With: "then"	clarification
133:14	Replace: "that, but I'm" With: "that I'm"	clarification
145:6	Replace: "They can make whatever--no. I never--" With: "No."	clarification
145:9	Replace: "not my say" With: "not for me to say"	clarification
145:11	Replace: "person sent information--that" With: "person that"	clarification
155:14	Replace: "There is charts" With: "There are charts"	clarification
156:6	Replace: "It does--sometimes" With: "Sometimes"	clarification



168:10	Replace: "it says Otellini" With: "it says "Otellini," it"	clarification
168:11	Replace: "I don't know if--who" With: "I don't know who"	clarification
168:12	Replace: "is from or what it--is that--I" With: "is from. I"	clarification
168:13	Replace: "name, so--it's not" With: "name; it's not"	clarification
190:16	Replace: "there is" With: "there are"	clarification
220:1	Replace: "had noticed that said" With: "had said"	clarification
221:5	Replace: "from, target to philosophy," With: "philosophy"	clarification
221:7	Replace: "made that view" With: "had the view"	clarification
239:15	Replace: "were interested" With: "were more interested"	clarification
	Replace: With:	
	Replace: With:	
	Replace: With:	
	Replace: With:	
	Replace: With:	

Subject to the above changes, I certify that the transcript is true and correct.

Paul J. Otellini  
Signature

3/11/13  
Date

# EXHIBIT J

IN THE UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE	)	
	)	
ANTITRUST LITIGATION	)	
	)	Master Docket
THIS DOCUMENT RELATES TO:	)	No. 11-CV-2509-LHK
	)	
ALL ACTIONS	)	

VIDEO DEPOSITION OF RENEE JAMES

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

March 22, 2013

Reported by: Teresa L. Dunn, CSR No. 00-0367

---

1 to obtain information about the facts that relate to  
2 the claims in this case?

3 A. No, I did not.

4 Q. So, for example, you didn't talk to any of  
09:12:48 5 your colleagues about who said what to whom regarding  
6 these employment practices?

7 A. No, I did not.

8 Q. So were all of the documents you reviewed in  
9 preparation for the deposition today then provided to  
09:13:02 10 you by the lawyers?

11 A. Yes, they were.

12 Q. Now, when did you join Intel?

13 A. I joined Intel in 198 -- end of '87, early '88  
14 as part of an acquisition.

09:13:21 15 Q. Were you working for another company?

16 A. I was.

17 Q. And which company were you working for?

18 A. A company called Bell Technologies.

19 Q. And was Bell Technologies based in the  
09:13:32 20 San Francisco Bay area?

21 A. It was Fremont, California.

22 Q. And since the time of the acquisition of Bell  
23 Technologies until today have you worked continuously  
24 for Intel?

09:13:44 25 A. Yes, I have.

1 Q. And I don't want to waste a lot of time on it.  
2 Can you just give me kind of a thumbnail sketch of your  
3 employment history at Intel?

4 A. It is a long one. I have predominantly been  
09:13:56 5 in R and D roles and then progressed through the  
6 management ranks and to this day run one of the -- run  
7 the other half -- we have two big R and D organizations  
8 and I run one of them.

9 Q. And which R and D organization is that?

09:14:15 10 A. The software research and development.

11 Q. Is there an acronym that Intel uses to refer  
12 to that organization?

13 A. They call it the Software Solutions Group or  
14 Software and Services Group which is SSG.

09:14:29 15 Q. And how long has that group been referred to  
16 as the Software and Services Group or SSG?

17 A. I'm guessing probably about 20 years.

18 Q. And when did you start working for that group?

19 A. I worked for that group and in that group for  
09:14:46 20 the greater part of my career, but I became the general  
21 manager of that group eight years ago.

22 Q. So if my math is holding up that's  
23 approximately in 2005?

24 A. Correct.

09:15:00 25 Q. And have you been the manager of that group

1 continuously since then?

2 A. Yes, I have.

3 Q. At a general level can you describe for me  
4 what your functions or responsibilities have been as  
09:15:17 5 the general manager of the Software and Services Group?

6 A. My direct responsibility is obviously  
7 oversight of the organization, the research agenda,  
8 managerial issues, P and L management, and the  
9 management of our software subsidiaries which report  
09:15:39 10 into the organization. It is its own reportable  
11 segment so I'm responsible for the revenue.

12 Q. As you sit here today about how many people  
13 kind of report up to you in that organization?

14 A. About 15,000.

09:15:55 15 Q. And has that number -- how has that number  
16 changed since you became responsible for that group?

17 A. It has approximately tripled.

18 Q. And has the growth been steady or have there  
19 been periods where the number of people you supervised  
09:16:16 20 went down?

21 A. No, it has never declined. It's been steady.  
22 It's been growth through acquisition, so in chunks.

23 Q. Does the Software and Services Group that you  
24 supervise have a recruiting organization within it?

09:16:54 25 A. No, we do not. We use the corporate

1 Q. Okay. Other than the one time where you  
2 actually spoke to Mr. Otellini about it, did you ever  
3 actually speak to Mr. Otellini again about the subject?

4 A. Not that I remember. That was the end of it.

10:43:41 5 Q. All right. So, for example, was there any  
6 oral communication between yourself and Mr. Otellini  
7 going on about the time of your e-mail communication?

8 A. Not that I remember. I mean, for him it  
9 wasn't a significant event.

10:43:59 10 Q. Well, how about for you?

11 A. For me, you know, we had employees who were  
12 working on deep future technology with a partner and it  
13 benefitted both companies extensively and it was -- in  
14 my opinion it was a loss for us when the employees went  
10:44:26 15 to Google.

16 Q. How did you learn Google was recruiting these  
17 folks from your group?

18 A. The employees presented us with their  
19 resignations.

10:44:39 20 Q. Okay. Did they present them directly to you  
21 or to someone else in your organization?

22 A. No, they were presented to Mr. Savage who runs  
23 the compiler organization and because of the  
24 extraordinary nature of them given the fact the  
10:44:53 25 employees were working on a project with Google --



1 Q. Right.

2 A. -- Mr. Savage came to me.

3 Q. Was he upset about it?

4 A. I think he was. I think it is fair to say

10:45:04 5 that.

6 Q. And then did you tell him that you raised it

7 directly with Paul Otellini? When I say "him" I mean

8 Mr. Savage.

9 A. Mr. Savage, I don't remember if I did or

10:45:15 10 didn't.

11 Q. Well, it was certainly significant enough that

12 you raised it, the subject, with the CEO of the

13 company, right?

14 A. I raised it because -- not the one incident in

10:45:31 15 Santa Clara, California. I raised it because it was

16 targeted at employees globally in multiple sites that

17 were working on joint development projects with Google

18 and the only way Google would have known about these

19 employees is because they were working on projects we

10:45:48 20 assigned them to for the benefit of the two companies.

21 Q. Were you worried that if you didn't address it

22 it might continue and get worse?

23 A. I -- I don't remember, you know, that that was

24 my number one objective. I mean, it did continue and

10:46:04 25 it did get worse.

1 Q. When you say "it got worse," what do you mean?

2 A. Google subsequent to this time -- this  
3 discussion about the Santa Clara based employees took  
4 our entire development team in China.

10:46:20 5 Q. In?

6 A. China.

7 Q. When was that?

8 A. It was in the same period of time.

9 Q. And did you talk to Mr. Otellini about that?

10:46:28 10 A. Not that I remember. I mean, it was -- after  
11 the Santa Clara specific incident I didn't.

12 Q. Okay. Did you think that when Google hired  
13 away from you the Intel people that you had assigned to  
14 work on a project with Google that that violated some  
10:46:58 15 duty of trust?

16 A. I don't know that it violated a duty of trust.  
17 I think that it detracted from the objective of  
18 creating value for the industry and just seemed  
19 counter-productive to the objective.

10:47:17 20 Q. Well, I mean after they did that did you think  
21 you couldn't trust Google the way you had in the past?

22 A. It did not change our -- we continued to do  
23 joint development projects.

24 Q. Have you ever done what they did to you to  
10:47:32 25 someone else, one of your partners?

1 A. If that's a personal question I don't --

2 Q. I'm saying your organization.

3 A. I can't speak on behalf of everybody at Intel  
4 or my organization. I personally have not.

10:47:48 5 Q. So I mean to clarify your point on that have  
6 you ever targeted --

7 MR. PICKETT: I'm sorry, did you say you  
8 personally have not?

9 THE WITNESS: Yes, I personally have not.  
10:47:55 10 Sorry, thank you.

11 Q. (By Mr. Saveri) Just to put a finer point on  
12 that have you ever given instructions to the recruiting  
13 people at Intel to target companies or personnel of  
14 companies with whom you were working at the time?

10:48:15 15 A. In a joint development capacity?

16 Q. Yes.

17 A. No, I have not.

18 Q. Do you think to do so would be unethical?

19 A. I don't know if it is ethical or not. I think  
10:48:32 20 that that's something that's an individual decision.  
21 It is counterproductive to the objective of joint  
22 development.

23 And so if you enter into a joint development,  
24 you know, the objective is to create value for the  
10:48:49 25 industry and for both companies. So the creation of

1 value in our industry is the people and the people's  
2 intellectual property.

3 And so in that sense it is not a matter of  
4 ethics, it is just counterproductive to the objective  
10:49:03 5 that you are trying to get done. They're already  
6 working for you, hence, the joint development.

7 Q. After Google hiring the folks from Intel in  
8 China did anybody at Intel speak to Google and ask them  
9 to stop it?

10:49:31 10 A. Not to my knowledge.

11 Q. Okay. And to the best of your knowledge did  
12 you ever raise it with Paul Otellini?

13 A. I don't recall that I ever raised it again.

14 Q. Okay. When I say "it," I mean I'm asking you  
10:49:45 15 specifically about the -- I think it was a subsequent  
16 situation where Google hired Intel folks from China?

17 A. From China.

18 Q. Did you discuss that with Otellini?

19 A. Not that I remember.

10:49:56 20 Q. Or anybody else at the company?

21 A. I certainly discussed it with -- I mean we  
22 certainly discussed it in my staff because that team  
23 was from a different member of my staff, not Mr. Savage  
24 or Mr. Fisher.

10:50:08 25 So we certainly had a conversation that

1 board.

2 Q. Well, okay, I mean, in that capacity you knew  
3 that Mr. Otellini had personal access or, in fact, knew  
4 personally chief executives at Google, right?

12:25:56 5 A. Certainly he knew them.

6 Q. All right. Did you expect when he -- when you  
7 communicated this information regarding Google to  
8 Mr. Otellini that he might take it up with his  
9 counterparts whom he knew at Google?

12:26:10 10 A. No, I didn't ask him to do that. I didn't  
11 know what he would or wouldn't do.

12 Q. Well, did you hope that this effort would  
13 stop?

14 A. I had no expectation that it would.

12:26:25 15 Q. Well, at this time you and Google were working  
16 on projects together, right?

17 A. We still are.

18 Q. And you viewed this effort as disruptive at  
19 the time?

12:26:34 20 A. I did believe at the time that it was  
21 disruptive given 20-percent turn-over in a single site  
22 in and as you point out in Moscow, Russia.

23 Q. And you wanted it to stop?

24 A. Well, as I said, the damage was done in  
12:26:50 25 Russia. There was no one else to take. And I didn't

## 1 C E R T I F I C A T E

2

3 I, Teresa L. Dunn, a Certified Shorthand  
4 Reporter for Oregon, do hereby certify that, pursuant  
5 to stipulation of counsel for the respective parties  
6 hereinbefore set forth, RENEE JAMES personally appeared  
7 before me at the time and place set forth in the  
8 caption hereof; that at said time and place I reported  
9 in Stenotype all testimony adduced and other oral  
10 proceedings had in the foregoing matter; that  
11 thereafter my notes were reduced to typewriting under  
12 my direction; and that the foregoing transcript, pages  
13 1 to 258, both inclusive, constitutes a full, true and  
14 accurate record of all such testimony adduced and oral  
15 proceedings had, and of the whole thereof.

16 Witness my hand and CSR stamp at Vancouver,  
17 Washington, this 29th day of March, 2013.

18

19

20

TERESA L. DUNN  
Certified Shorthand Reporter  
Certificate No. 00-0367

21

22

23

24

25

**CORRECTIONS TO DEPOSITION TRANSCRIPT OF  
RENEE JAMES, DATED MARCH 22, 2013**

*In re High-Tech Employee Antitrust Litigation  
Case No. 11-CV-2509-LHK (N.D. Cal.)*

<b>Page:Line</b>	<b>Amendment</b>	<b>Reason for Amendment</b>
9:19	Replace: "has been - and Darren" With: "and Darren Bernhard"	Clarification
20:19	Replace: "web site and we don't" With: "web site we don't"	Clarification
30:3	Replace: "except" With: "accept"	Correction
30:4	Replace: "one for change and/or" With: "one and/or"	Clarification
30:5	Replace: "suggested the higher or lower, so in that sense." With: "suggest a higher or lower base."	Clarification
44:6	Replace: "top tech, top." With: "top tech."	Clarification
46:5	Replace: "say would you approve this." With: "say, "Would you approve this?""	Clarification
49:23	Replace: "Most recently we have" With: "We have"	Clarification
56:4	Replace: "through conversations with" With: "through an email conversation with"	Clarification
56:5-6	Replace: "discussion there about employees" With: "discussion about employees"	Clarification
57:1-2	Replace: "raising the concern" With: "raising by email a concern"	Clarification



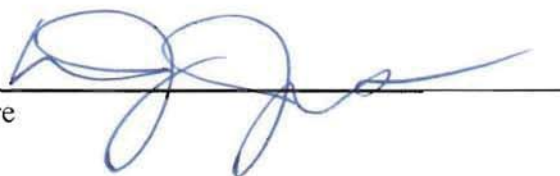
57:13	Replace: "I recall I just alerted" With: "I recall--previously alerted"	Clarification
57:14	Replace: "issue and" With: "issue generally and"	Clarification
57:18-19	Replace: "turn-over and that I believe that" With: "turn-over generally. Later, by email, I told him that"	Clarification
58:1	Replace: "something to them about that" With: "something to Google about that"	Clarification
59:7	Replace: "it was nonspecific." With: "it was nonspecific to Google."	Clarification
59:25-60:1	Replace: "turn-over we had he" With: "turn-over he"	Clarification
67:3	Replace: "employees took" With: "employees--took"	Clarification
89:23	Replace: "I don't know what ITH." With: "I don't know what ITH stands for."	Clarification
98:3-4	Replace: "IPO until we became an investor pre" With: "IPO; until pre"	Clarification
98:4	Replace: "time of IPO became" With: "time of IPO we became"	Clarification
98:11	Replace: "as being a significant investor" With: "as a significant investor"	Clarification
101:2	Replace: "a software company." With: "a software organization."	Clarification
113:1	Replace: "I didn't neither agree nor disagree." With: "I didn't agree or disagree."	Clarification



129:16-17	Replace: "offer we tried to give them either if" With: "offer, and for those we wanted to retain, we tried to give them--if"	Clarification
129:18	Replace: "for, more" With: "for--more"	Clarification
150:25	Replace: "GPO as we --" With: "GPO as we call it."	Clarification
155:15	Replace: "Adam" With: "Atom"	Correction
155:16	Replace: "Adam" With: "Atom"	Correction
155:17	Replace: "Adam" With: "Atom"	Correction
157:1	Replace: "Adam" With: "Atom"	Correction
157:2	Replace: "Adam" With: "Atom"	Correction
181:19	Replace: "in the deposition." With: "in the deposition prep."	Correction
186:6	Replace: "I think sure" With: "I think so"	Clarification
189:14	Replace: "complaining that people" With: "complaining about the people"	Clarification
189:15	Replace: "worked for us that came" With: "who now worked for us who came"	Clarification
190:18	Replace: "else wise" With: "otherwise"	Clarification
213:21	Replace: "it is not only non-binding"	Clarification

	With: "it is non-binding"	
223:18	Replace: "work on Intel." With: "work on Intel chips."	Clarification
	Replace: With:	
	Replace: With:	

Subject to the above changes, I certify that the transcript is true and correct.

Signature 

Date 

# EXHIBIT K

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION  
4

5 IN RE: HIGH-TECH EMPLOYEE )  
6 ANTITRUST LITIGATION )  
7 ) No. 11-CV-2509-LHK  
8 THIS DOCUMENT RELATES TO: )  
9 ALL ACTIONS. )  
10 \_\_\_\_\_  
11  
12

13 VIDEOTAPED DEPOSITION OF DEBORAH CONRAD  
14 HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY  
15 November 21, 2012  
16

17 Reported by: Anne Torreano, CSR No. 10520  
18  
19  
20  
21  
22  
23  
24  
25

1 MR. HINMAN: Frank Hinman with Bingham  
2 McCutcheon representing Intel and the witness.

3 MS. CARRINGTON: Casey Carrington from Intel.

4 MR. EVANS: Eric Evans from Mayer Brown for  
09:12:32 5 Google.

6 MR. TUBACH: Michael Tubach, O'Melveny & Myers  
7 on behalf of Apple.

8 THE VIDEOGRAPHER: Thank you.

9 The court reporter will now swear in the  
09:12:39 10 witness.

11 DEBORAH CONRAD,

12 after having been duly sworn to tell the  
13 truth, testified as follows:

14 EXAMINATION

09:12:39 15 BY MR. SAVERI:

16 Q. Would you state your name for the record,  
17 please?

18 A. Deborah Conrad.

19 Q. And, Ms. Conrad, where do you work?

09:12:54 20 A. I work at Intel.

21 Q. And what's your business address?

22 A. 2200 Mission College Boulevard, Santa Clara,  
23 California 9502 -- or sorry, 95054.

24 Q. And where do you live?

09:13:09 25 A. I live in Menlo Park.

1 federal government, the state government, in connection  
2 with your work at Intel?

3 A. No.

4 Q. Have you ever provided any information to the  
09:17:21 5 government in connection with any litigation by the  
6 government?

7 A. No.

8 Q. So would you tell me what your current job  
9 title is?

09:17:37 10 A. I'm the chief marketing officer.

11 Q. Of Intel?

12 A. Yes.

13 Q. Were you the vice president of the sales and  
14 marketing group for some period of time?

09:17:47 15 A. I was a vice president in the sales and  
16 marketing group.

17 Q. And were you also a or the general manager for  
18 the solution market development group?

19 A. I was.

09:17:59 20 (DEPOSITION EXHIBIT 378 MARKED.)

21 BY MR. SAVERI:

22 Q. Let me hand you what's been marked as -- or  
23 what I've marked as 386.

24 So let me just say for purposes of the record  
09:18:21 25 that this document has the Bates number 231APPLE012850

1 or someone else?

2 A. I reported to Anand Chandrasekher, who  
3 reported to Paul at the time.

4 Q. Okay. With that kind of March 2005 date in  
11:07:16 5 mind, can you tell me when you first spoke to  
6 Mr. Mansfield about the agreement between Apple and  
7 Intel?

8 A. The time that I remember the discussion was  
9 several years later. We were in the middle of a very  
11:07:34 10 ambitious engineering project and had some very  
11 critical milestones, and we had people on site at  
12 Apple. And it was at that time that he, Bob, had come  
13 to me and said, let's make sure we're staffing up our  
14 respective teams and not filling each other's holes  
11:07:52 15 with our very unique and rare talent. It was a very  
16 exclusive kind of engineering capability we were  
17 building up.

18 Q. Let me make sure I have that clear.

19 So is it your testimony that the first time  
11:08:08 20 you spoke to Mr. Mansfield about the agreement was in  
21 approximately 2007?

22 A. Yes, that's what I remember. Yes.

23 Q. And so prior to that time, namely, between  
24 March of 2005 and that first conversation with  
11:08:25 25 Mr. Mansfield, is it your recollection that there was

1 no agreement between Apple and Intel regarding  
2 poaching, cold-calling?

3 A. Yes.

4 Q. Okay. Now, when Mr. Mansfield first  
11:08:53 5 approached you in 2007 about the agreement, did you  
6 agree right away that it was a good idea?

7 A. Yes.

8 Q. Okay. Did you consult with any of your  
9 superiors about the agreement on or about that time?

11:09:12 10 A. No.

11 Q. Did you ever seek legal counsel at that time?

12 A. Not on that specific topic, no.

13 Q. Okay. And so for example, when you -- when  
14 you spoke to Mr. Mansfield and he suggested this  
11:09:31 15 agreement, you didn't check with lawyers at Intel to  
16 see if there was any kind of legal issue surrounding  
17 it, did you?

18 MR. HINMAN: Asked and answered.

19 THE WITNESS: No.

11:09:42 20 BY MR. SAVERI:

21 Q. Is there any written record of this agreement?

22 A. No, not that I know of.

23 Q. Now, at the time -- or while you were in  
24 charge of the Apple team, did you keep a notebook?

11:10:09 25 A. A note -- I'm sorry. I don't understand.



1 question is misleading in that regard.

2 And the second is that, you know, Ms. Conrad's  
3 told you that she's not an engineer, so there's some  
4 foundational issues with this particular question.

11:49:53 5 MR. SAVERI: Okay. Well, and maybe that's the  
6 place to start.

7 BY MR. SAVERI:

8 Q. Are you -- are you aware one way or -- one way  
9 or the other whether Intel provided any highly --  
11:50:06 10 excuse me, whether Intel shared any highly sensitive  
11 technological information with Apple in connection with  
12 the business arrangement that's discussed in this part  
13 of the interrogatory?

14 A. Yes.

11:50:17 15 Q. And what was that? What was the highly  
16 sensitive technological information that was shared  
17 with Apple?

18 MR. HINMAN: Object to lack of foundation, but  
19 please tell him what you know.

11:50:32 20 THE WITNESS: Yeah, thank you.

21 The reason I'm hesitating a little bit,  
22 because I'm not quite clear of your question. It's  
23 such a range of information and a range over a long  
24 period of time. So if you're looking for something  
11:50:44 25 very specific, I would need more of a focus of kind of

1 technology or time.

2 But lacking that -- and I understand this was

3 our response, and it was prepared, as I understand it,

4 several months ago, and I was out on medical leave

11:51:02 5 being treated for breast cancer, so some of this is

6 just new.

7 The sensitive information had a range of when

8 we were, in some cases, inventing completely new

9 technologies between the two companies. So there were

11:51:19 10 cross-patent activities going on. There was

11 information being shared in order to optimize their

12 applications on our hardware.

13 There was also a lot of work being done in

14 streamlining the power requirements of their products.

11:51:35 15 So there was low-power technology that was shared

16 between the two companies in order to reduce battery

17 and be able to do things like better displays.

18 So it's such a broad range. I can speak to it

19 generally, but that's, you know --

11:51:54 20 BY MR. SAVERI:

21 Q. And that's perfectly fair, and so I'm just

22 asking if even from a general level --

23 A. That's the general answer.

24 Q. In the next sentence there's a reference to

11:52:22 25 the fact -- well, let me just read it to you. It

1 Q. -- regarding this subject?

2 MR. HINMAN: And "this subject," I'm just  
3 going to object as vague, and maybe you want to sharpen  
4 it up a bit.

12:02:02 5 MR. SAVERI: And I was trying to use a  
6 shorthand but -- so let me ask a very precise question.

7 BY MR. SAVERI:

8 Q. Are you aware whether or not anyone else at  
9 Apple contacted Apple in the latter half of 2005 to  
12:02:13 10 express concern about the companies actively recruiting  
11 each other's engineers?

12 MR. TUBACH: You said "Apple" twice in that  
13 question.

14 THE WITNESS: Can you repeat the question  
12:02:23 15 again?

16 BY MR. SAVERI:

17 Q. Maybe I screwed it up. I was trying to be  
18 precise.

19 A. I'm confused on how you're using "Apple" and  
12:02:28 20 "Intel."

21 Q. I may have reversed them.

22 Do you know whether or not, in the latter half  
23 of 2005, Apple contacted anybody else at Intel to  
24 express concern about the companies actively recruiting  
12:02:50 25 each other's engineers?

1 A. No.

2 Q. Okay. The next sentence says, "Apple and

3 Intel" -- excuse me, "Intel and Apple discussed the

4 fact that the trust required for a successful

12:03:14 5 collaboration would be compromised and the effort

6 itself significantly undermined if Intel's or Apple's

7 recruiters make cold calls targeting each other's

8 employees."

9 Do you see that?

12:03:26 10 A. Yes.

11 Q. Does that accurately describe the conversation

12 that you did have with Mr. Mansfield in 2007?

13 A. Yes.

14 Q. On page 12, on line 5 there's a paragraph that

12:03:50 15 begins "To help."

16 Do you see that?

17 A. Yes.

18 Q. And it says, "To help that their extensive

19 historic collaboration was successful, Intel and Apple

12:03:59 20 came to an understanding that they would avoid

21 cold-calling each other's key employees involved with

22 the collaboration and that Apple would keep Intel

23 apprised when its employees applied for positions at

24 Apple."

12:04:10 25 Did I read that right?

1 A. Yes.

2 Q. Does that accurately describe the  
3 understanding that you reached with Mr. Mansfield?

4 A. Yes.

12:04:16 5 Q. Now, in the next paragraph at line 11 it says,  
6 "Thereafter, Intel and Apple would occasionally have  
7 discussions when Intel engineers approached Apple."

8 A. Yes.

9 Q. Do you see that?

12:04:30 10 Is that accurate?

11 A. Yes.

12 Q. Now, I think you identified one situation when  
13 this was discussed.

14 Do you recall that?

12:04:40 15 A. Yes.

16 Q. Reading this, does this refresh your  
17 recollection that there were in fact more than one  
18 discussion about this subject?

19 A. The way I read this?

12:04:53 20 Q. Yes.

21 A. Is that I know there were people on my team  
22 that would -- that were working with Apple and that  
23 there would occasionally be discussions. And so it  
24 wasn't about a specific employee. It was just

12:05:07 25 generally. It was a general belief that we shouldn't

1 Q. When you say "knowing Steve," what do you  
2 mean?

3 A. I knew Steve, I knew Steve well, and I would  
4 not have expected her to have that kind of a  
02:58:27 5 conversation with me without first talking with Steve.

6 Q. So how -- when do you -- how -- when did you  
7 first meet Steve Jobs?

8 A. In March of 2005.

9 Q. And that was at the beginning of your tenure  
02:58:41 10 as the head of the Apple team?

11 A. That's correct.

12 Q. From that point in time until his death, did  
13 you ever discuss with him the subject of recruiting or  
14 hiring between the two companies?

02:59:04 15 A. No, never, including myself.

16 THE WITNESS: I thought we were done. There's  
17 a whole new stack. Sorry.

18 MR. SAVERI: I'm -- we're making progress.

19 MR. TUBACH: Are you falsely marking something  
02:59:59 20 else?

21 MR. SAVERI: We're going to go another 15  
22 minutes now.

23 Yeah, I am. Of course I affixed the stamp  
24 incorrectly.

03:00:13 25 THE WITNESS: How should I put these back in

## 1 REPORTER'S CERTIFICATE

2 The undersigned Certified Shorthand Reporter  
3 licensed in the State of California does hereby  
4 certify:

5 I am authorized to administer oaths or  
6 affirmations pursuant to Code of Civil Procedure,  
7 Section 2093(b), and prior to being examined, the  
8 witness was duly administered an oath by me.

9 I am not a relative or employee or attorney or  
10 counsel of any of the parties, nor am I a relative or  
11 employee of such attorney or counsel, nor am I  
12 financially interested in the outcome of this action.

13 I am the deposition officer who  
14 stenographically recorded the testimony in the  
15 foregoing deposition, and the foregoing transcript is a  
16 true record of the testimony given by the witness.

17 Before completion of the deposition, review of  
18 the transcript [x] was [ ] was not requested. If  
19 requested, any changes made by the deponent (and  
20 provided to the reporter) during the period allowed are  
21 appended hereto.

22 In witness whereof, I have subscribed my name  
23 this \_\_\_\_ day of \_\_\_\_\_, 2012.

24

25 ANNE M. TORREANO, CSR No. 10520



2224 THIRD AVENUE, SAN DIEGO, CALIFORNIA 92101

800.939.0080  
telephone

6

RECEIVED-SV CALENDAR	
March 18, 2013	
c/m#	000035588
Dates to be Entered	
Ø	
The attorney, whose initials appear below, has reviewed the applicable court rules, and has verified that the above dates are correct.	
Atty: _____	
Date Processed: 3/8/13	
Rec'd: Mail/In Box/Fax/Record/Crtrun or Other: _____	
Routed to: F. WMMW	
Processed by: J. STANOWSKI	

February 28, 2013

Joseph Saveri, Esq.  
Joseph Saveri Law Firm  
505 Montgomery Street, Suite 625  
San Francisco, CA 94111


RE: HIGH-TECH EMPLOYEE ANTITRUST LITIGATION  
Case No. 11-CV-2509-LHK

Dear Mr. Saveri:

The original deposition of Deborah Conrad, taken on November 21, 2012, has been subscribed to by the witness as provided under Rule 30 of the Federal Code. Errata sheet enclosed.

The original deposition has been sealed and is being forwarded to you per Rule 30(f)(1) of the Federal Code.

Sincerely,

  
Steven T. Graham on behalf of  
Anne Torreano, CSR No. 10520  
KRAMM COURT REPORTING

AT/stg

Enclosures

cc: Frank M. Hinman, Esq.  
Michael F. Tubach, Esq.



**CORRECTIONS TO DEPOSITION TRANSCRIPT OF  
DEBORAH CONRAD, DATED NOVEMBER 21, 2012**

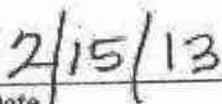
*In re High-Tech Employee Antitrust Litigation  
Case No. 11-CV-2509-LHK (N.D. Cal.)*

<b>Page:Line</b>	<b>Amendment</b>	<b>Reason for Amendment</b>
9:2	Replace: "McCutcheon" With: "McCutchen"	Clarification
27:19	Replace: "day's" With: "one day's"	Clarification
50:1-2	Replace: "a relatively similar--complexity similar of their jobs" With: "jobs of relatively similar complexity"	Clarification
100:16	Replace: "battery" With: "battery usage"	Clarification
120:17	Replace: "referred here" With: "referred to here"	Clarification
162:7	Replace: "Dottie" With: "Dadi"	Correction
162:12	Replace: "Dottie" With: "Dadi"	Correction
175:9	Replace: "Pann" With: "Penn"	Correction
196:24	Replace: "I was not surprised" With: "I would not have been surprised"	Clarification
200:8	Replace: "is" With: "are"	Clarification
206:12	Replace: "76583 to 3888" With: "76583DOC003888"	Correction

233:20	Replace: "HINMAN" With: "SAVERI"	Correction
255:25	Replace: "Dottie" With: "Dadi"	Correction
256:1	Replace: "Dottie" With: "Dadi"	Correction

Subject to the above changes, I certify that the transcript is true and correct.

  
\_\_\_\_\_  
Signature

  
\_\_\_\_\_  
Date

# EXHIBIT L

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF CALIFORNIA  
3 SAN JOSE DIVISION  
4

5 IN RE: HIGH-TECH EMPLOYEE )  
6 ANTITRUST LITIGATION )  
7 ) No. 11-CV-2509-LHK  
8 THIS DOCUMENT RELATES TO: )  
9 ALL ACTIONS. )  
10 \_\_\_\_\_ )  
11

12 DEPOSITION OF RANNA PRAJAPATI  
13 Thursday, February 21, 2013  
14  
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23

24 Reported By:  
25 KATHLEEN WILKINS, CSR #10068, RPR-RMR-CRR-CCRR-CLR

09:39:47 1 Q. Okay. Great.

09:39:48 2 MR. SHAH: One thing. You might just  
09:39:50 3 want to speak up so the folks on the phone can  
09:39:53 4 hear.

09:39:53 5 THE WITNESS: Okay. I'll do that.

09:39:54 6 BY MR. DALLAL:

09:39:55 7 Q. Thank you.

09:39:56 8 A. Yes.

09:39:56 9 Q. All right. So what is your current job?

09:40:02 10 A. I'm a business development manager for  
09:40:04 11 Intel covering the high performance computing  
09:40:06 12 space.

09:40:07 13 Q. Okay. And how long have you held that  
09:40:10 14 position?

09:40:14 15 A. A little more than two years.

09:40:15 16 Q. Okay. And is that your first position  
09:40:20 17 at Intel?

09:40:21 18 A. No.

09:40:22 19 Q. Okay. How long have you worked at  
09:40:23 20 Intel?

09:40:24 21 A. Over 20 years.

09:40:25 22 Q. Okay. And was that your first job in  
09:40:33 23 the private sector after school?

09:40:36 24 A. Yes.

09:40:36 25 Q. Okay. So did you go to college?

09:40:41 1 A. Yes.

09:40:42 2 Q. Okay. Where did you go?

09:40:44 3 A. University of Michigan.

09:40:45 4 Q. Okay. And were you hired to Intel

09:40:49 5 directly out of college?

09:40:51 6 A. Yes.

09:40:52 7 Q. And what was your major at Michigan?

09:40:54 8 A. Electrical engineering.

09:40:56 9 Q. Okay. So let's break that down a bit.

09:41:06 10 What was your first position that you

09:41:08 11 held at Intel?

09:41:12 12 A. A validation engineer.

09:41:14 13 Q. Okay. And then how long did that last?

09:41:23 14 A. Three years.

09:41:23 15 Q. Three years. Okay.

09:41:28 16 And then what was your next title at

09:41:31 17 Intel?

09:41:32 18 A. Flash technical marketing engineer.

09:41:34 19 Q. Okay. How long was that?

09:41:41 20 A. About three years.

09:41:42 21 Q. Okay. And so that takes you up to

09:41:48 22 roughly what year?

09:41:57 23 A. 1998.

09:41:59 24 Q. Okay. And then you had a new position

09:42:01 25 as of 1998?

09:42:02 1 A. Mh-hmm.

09:42:03 2 Q. Okay. And what was that?

09:42:05 3 A. Applications engineer.

09:42:08 4 Q. All right. And then how long did you

09:42:11 5 hold that job?

09:42:12 6 A. Two years.

09:42:13 7 Q. Okay. So till about 2000?

09:42:15 8 A. Mh-hmm.

09:42:15 9 Q. And then what was your next position

09:42:17 10 after that?

09:42:18 11 A. Technical consultant.

09:42:23 12 Q. And to be clear, all of these were full

09:42:25 13 time at Intel as an employee of Intel? No

09:42:29 14 contracting arrangements or anything like that,

09:42:32 15 right?

09:42:32 16 A. Yes.

09:42:32 17 Q. Okay. And how long were you a technical

09:42:35 18 consultant?

09:42:35 19 A. Two years.

09:42:36 20 Q. Okay. So then you had a new position in

09:42:41 21 2002?

09:42:41 22 A. Yes.

09:42:42 23 Q. What was that?

09:42:42 24 A. Project management.

09:42:44 25 Q. Okay. How long was that?



09:42:48 1 A. Three years.

09:42:48 2 Q. To 2005?

09:42:54 3 A. Mh-hmm.

09:42:55 4 Q. And then what was your next job?

09:42:57 5 A. Business development manager.

09:43:01 6 Q. Okay. And that's your present title as  
09:43:03 7 well?

09:43:03 8 A. Correct.

09:43:04 9 Q. Okay. But was there -- and how long did  
09:43:07 10 you -- strike that.

09:43:10 11 So you told me that you held the title  
09:43:12 12 of business manager for about two years.

09:43:14 13 Does that just mean your present  
09:43:15 14 position?

09:43:17 15 A. Present account base, yes.

09:43:19 16 Q. Present account base?

09:43:20 17 A. Yes.

09:43:20 18 Q. Okay. So you've been some manner of  
09:43:23 19 business development manager since 2005?

09:43:26 20 A. Yes.

09:43:26 21 Q. And that is the job you hold presently?

09:43:28 22 A. Yes.

09:43:29 23 Q. Okay. So you mentioned that your  
09:43:31 24 present account base you've had for about two  
09:43:34 25 years.

11:14:44 1 asking about a quote from a document that you  
11:14:47 2 haven't shown to the witness, so lacks foundation.  
11:14:51 3 And the document speaks for itself.

11:14:59 4 THE WITNESS: Yes, I remember it.

11:15:02 5 BY MR. DALLAL:

11:15:02 6 Q. Do you recall whether you saw a  
11:15:05 7 communication from a Pixar complainant or from an  
11:15:10 8 Intel employee reporting on a conversation with a  
11:15:12 9 Pixar complainant, or do you not recall either  
11:15:17 10 way?

11:15:17 11 MR. SHAH: Same objection.

11:15:19 12 THE WITNESS: I -- I recall on an Intel  
11:15:22 13 employee.

11:15:23 14 BY MR. DALLAL:

11:15:36 15 Q. So is it your understanding that if  
11:15:43 16 Intel agreed not to employ cold calling in  
11:15:50 17 attempts to recruit Pixar employees, that Intel  
11:15:55 18 would have a better chance of collaborating  
11:16:00 19 further or working further with Pixar?

11:16:03 20 MR. SHAH: Objection. Assumes facts not  
11:16:05 21 in evidence. Lacks foundation and calls for a  
11:16:11 22 legal conclusion.

11:16:19 23 THE WITNESS: So my goal was to preserve  
11:16:21 24 the collaboration, or goals to preserve the  
11:16:25 25 collaborative efforts and just maintain that.

11:16:28 1 BY MR. DALLAL:

11:16:29 2 Q. And was it your understanding that Intel  
11:16:34 3 not using cold calling to recruit Pixar employees  
11:16:41 4 would support the purpose of protecting the  
11:16:50 5 collaboration?

11:16:52 6 MR. SHAH: Objection. Calls for a legal  
11:16:53 7 conclusion. Lacks foundation.

11:16:58 8 THE WITNESS: Yes. As it was focused on  
11:16:59 9 a specific team, the RenderMan team.

11:17:16 10 BY MR. DALLAL:

11:17:17 11 Q. So in what way would such a policy  
11:17:23 12 support the purpose of preserving the  
11:17:26 13 collaborative efforts between Intel and Pixar?

11:17:32 14 MR. SHAH: Objection. Vague and  
11:17:32 15 ambiguous.

11:17:37 16 THE WITNESS: Can you rephrase the  
11:17:38 17 question? What exactly are you -- I'm sorry. I  
11:17:43 18 didn't understand, like --

11:17:47 19 BY MR. DALLAL:

11:17:47 20 Q. That's okay. I can rephrase.

11:18:11 21 Given your stated goal of preserving the  
11:18:15 22 collaboration between Intel and Pixar, my question  
11:18:20 23 is, how would a policy of not using cold calling  
11:18:27 24 to recruit Pixar employees serve that purpose?

11:18:33 25 MR. SHAH: Objection. Vague and

11:18:34 1 ambiguous. Mischaracterizes previous testimony.

11:18:41 2 THE WITNESS: It's helping to preserve  
11:18:44 3 the relationship. I mean, and it's not -- as I  
11:18:49 4 mentioned before, it wasn't -- it was an ask by  
11:18:52 5 them to not cold call, in particular, people from  
11:19:01 6 a specific team that was small to begin with, and  
11:19:04 7 people that we had been collaborating with on  
11:19:07 8 getting feedback on Larrabee, for example. It  
11:19:10 9 just helps, you know, maintain the relationship  
11:19:13 10 and continue the collaborative efforts versus just  
11:19:18 11 stopping them.

11:19:18 12 BY MR. DALLAL:

11:19:23 13 Q. And when you say "an ask," that refers  
11:19:27 14 to a request?

11:19:29 15 A. A request.

11:19:30 16 Q. Okay. So is it fair to say that you  
11:19:45 17 thought that honoring their request would help  
11:19:49 18 preserve the relationship?

11:19:52 19 MR. SHAH: Objection. Vague and  
11:19:54 20 ambiguous.

11:19:59 21 THE WITNESS: Yes. Yes, I did.

11:20:30 22 MS. RICHARDSON: I'm sorry to interrupt,  
11:20:30 23 but could the witness just speak up a bit? It's  
11:20:33 24 hard to hear over the phone.

11:20:35 25 THE WITNESS: Sure. Can you hear me

1 I, Kathleen A. Wilkins, Certified  
2 Shorthand Reporter licensed in the State of  
3 California, License No. 10068, hereby certify that  
4 the deponent was by me first duly sworn and the  
5 foregoing testimony was reported by me and was  
6 thereafter transcribed with computer-aided  
7 transcription; that the foregoing is a full,  
8 complete and true record of said proceedings.

9 I further certify that I am not of  
10 counsel or attorney for either of any of the  
11 parties in the foregoing proceeding and caption  
12 named or in any way interested in the outcome of  
13 the cause in said caption.

14 The dismantling, unsealing, or unbinding  
15 of the original transcript will render the  
16 reporter's Certificates null and void.

17 In witness whereof, I have hereunto set  
18 my hand this day: March 4, 2013.

19 \_\_\_\_\_ Reading and Signing was requested.

20 \_\_\_\_\_ Reading and Signing was waived.

21 \_\_\_\_X\_\_\_\_ Reading and signing was not requested.

22 \_\_\_\_\_

23 KATHLEEN A. WILKINS

24 CSR 10068, RPR-RMR-CRR-CCRR-CLR

25

# EXHIBIT M

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE )  
ANTITRUST LITIGATION )  
 ) No. 11-CV-2509-LHK  
THIS DOCUMENT RELATES TO: )  
ALL ACTIONS. )  
\_\_\_\_\_ )

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

VIDEO DEPOSITION OF BRUCE CHIZEN

MARCH 15, 2013

Reported by: Rosalie A. Kramm, CSR No. 5469, CRR

09:22:22 1 A. Yeah, I just don't recall the dates of --

09:22:25 2 Q. That's perfectly fair.

09:22:26 3 A. -- who was promoted when or when titles  
09:22:28 4 changed. All I remember is when I started the job and  
09:22:31 5 when I left.

09:22:33 6 Q. Well, when did you -- when did you come to  
09:22:35 7 Adobe?

09:22:36 8 A. I joined Aldus Corporation in February of 1994.  
09:22:40 9 The merger with Adobe Systems, I believe, was in the fall  
09:22:45 10 of that year; and joined Adobe in conjunction with that  
09:22:50 11 merger.

09:22:50 12 Q. That was 1994?

09:22:51 13 A. 1994, yes.

09:22:52 14 Q. And could you just give me a brief thumbnail  
09:22:57 15 sketch of what you did at Adobe from the time you joined  
09:23:01 16 Adobe in 1994 until you --

09:23:03 17 A. Yes.

09:23:03 18 Q. -- became the president and CEO.

09:23:05 19 A. If my memory serves me correct, I started out  
09:23:08 20 as vice president of the consumer division; approximately  
09:23:16 21 two years after that became vice president of the  
09:23:21 22 graphics products division. In 1998, became responsible  
09:23:29 23 for all of products, marketing, and engineering; and in  
09:23:36 24 2000 president, and then the end of 2000, CEO and  
09:23:39 25 president.



09:23:57 1 Q. Now, let's just turn, I guess, to the end of  
09:23:58 2 your career at Adobe. So in approximately the fall or  
09:24:01 3 towards the end of 2007, you stopped being the CEO,  
09:24:07 4 correct?

09:24:07 5 A. Correct.

09:24:08 6 Q. And then you said you were a strategic advisor  
09:24:10 7 from that point in time until you left the company?

09:24:13 8 A. Yeah, so I stepped down as CEO in the fall of  
09:24:17 9 2007, became a strategic advisor, predominantly to the  
09:24:22 10 then new CEO, Shantanu Narayen until approximately May or  
09:24:27 11 June of 19- -- of 2008.

09:24:30 12 Q. And then at that point did you stop working for  
09:24:34 13 Adobe?

09:24:35 14 A. Yes. And I also exited the board approximately  
09:24:42 15 April 2008.

09:24:45 16 Q. Let's just focus on your board function at  
09:24:47 17 Adobe for a second. When did you start participating in  
09:24:50 18 the board?

09:24:51 19 A. When I became either president or CEO, so it  
09:24:55 20 would be the year 2000.

09:24:57 21 Q. And then did you -- when did you -- when did  
09:24:59 22 you stop participating on the board?

09:25:02 23 A. Approximately April 2008.

09:25:04 24 Q. So there was a period of time when you were  
09:25:05 25 participating at the board level at Adobe after you had

17:15:03 1 Q. Are you aware of any non-solicitation  
17:15:06 2 agreements between Google and Intel?

17:15:10 3 Were you aware of any agreements between Google  
17:15:12 4 and Intel in 2007?

17:15:14 5 A. No, not that I recall.

17:15:15 6 Q. Were you -- prior to learning about this case,  
17:15:25 7 were you aware that there was a non-solicitation  
17:15:27 8 agreement between Apple and Pixar?

17:15:29 9 A. No, not that I recall.

17:15:30 10 Q. And prior to learning about this case, did you  
17:15:33 11 learn that there was an agreement not to solicit between  
17:15:41 12 Pixar and Lucasfilm?

17:15:45 13 A. Not that I recall.

17:15:58 14 Q. Now, going back to this document, with respect  
17:16:00 15 to Google, did you think Google was a -- was a recruiting  
17:16:06 16 threat to Adobe at this time?

17:16:08 17 A. Yes.

17:16:08 18 Q. How?

17:16:12 19 A. They were able to hire just about any great  
17:16:16 20 engineer, because they were able to do so through a much  
17:16:21 21 different environment than we ever provided them with at  
17:16:24 22 Adobe.

17:16:25 23 Q. Did you at Adobe lose people to Google?

17:16:28 24 A. Yes, we did.

17:16:39 25 MR. SAVERI: Let's go off the record for a

16:41:10 1 I, Rosalie A. Kramm, Certified Shorthand  
 16:41:10 2 Reporter licensed in the State of California, License No.  
 16:41:10 3 5469, hereby certify that the deponent was by me first  
 16:41:10 4 duly sworn and the foregoing testimony was reported by me  
 16:41:10 5 and was thereafter transcribed with computer-aided  
 16:41:10 6 transcription; that the foregoing is a full, complete,  
 16:41:10 7 and true record of said proceedings.

16:41:10 8 I further certify that I am not of counsel or  
 16:41:10 9 attorney for either of any of the parties in the  
 16:41:10 10 foregoing proceeding and caption named or in any way  
 16:41:10 11 interested in the outcome of the cause in said caption.

16:41:10 12 The dismantling, unsealing, or unbinding of the  
 16:41:10 13 original transcript will render the reporter's  
 16:41:10 14 certificates null and void.

16:41:10 15 In witness whereof, I have hereunto set my hand  
 16:41:10 16 this day: March 26, 2013.

16:41:10 17   X   Reading and Signing was requested.

16:41:10 18            Reading and Signing was waived.

16:41:10 19            Reading and signing was not requested.

16:41:10 20

16:41:10 21

16:41:10 22

\_\_\_\_\_  
 ROSALIE A. KRAMM

16:41:10 23

CSR 5469, RPR, CRR

16:41:10 24

25

# EXHIBIT N

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE )  
ANTITRUST LITIGATION )  
 ) No. 11-CV-2509-LHK  
THIS DOCUMENT RELATES TO: )  
ALL ACTIONS. )

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VIDEO DEPOSITION OF SCOTT COOK

ATTORNEYS' EYES ONLY

March 22, 2013

Reported by: Anne Torreano, CSR No. 10520

---

1 after school, worked there for four years, in  
2 Cincinnati. Then worked for Bain & Company here in  
3 Menlo Park for about two and a half years. And at that  
4 time I started Intuit.

10:14:31 5 Q. And what year that was?

6 A. I started working on the idea in 1982, but Tom  
7 and I, co-founder and I got together about 30 years ago  
8 this month, in March --

9 Q. Congratulations.

10:14:46 10 A. -- of 1983.

11 Q. And then what was the history of your role  
12 with Intuit starting from the start of the company?

13 A. I was the CEO for the first eleven years,  
14 through -- into 1994, and then I hired a CEO, and we've  
10:15:00 15 had a series of CEOs since. Then I became chairman of  
16 the executive committee at that point, and that's the  
17 role I hold today.

18 Q. And who have the CEOs been since you  
19 transitioned out of that role?

10:15:21 20 A. Bill Campbell was the first. Bill Harris was  
21 the second. Steve Bennett was the third. Brad Smith  
22 is the fourth and current.

23 Q. And approximately what was Mr. Campbell's  
24 tenure as CEO?

10:15:49 25 A. From roughly the spring of 1994 to sometime in

1 front of you should have the Bate -- excuse me, the  
2 exhibit number Exhibit 679.

3 Do you see that?

4 A. Yes, I do.

01:52:59 5 Q. And if you'd take a moment to review this  
6 document. Just let me know when you're done.

7 A. Okay. I've read it.

8 Q. And have you seen this document before?

9 A. No, I have not.

01:54:47 10 Q. Have you ever talked with anyone at Apple or  
11 Adobe about an agreement between those companies not to  
12 cold-call into each other?

13 A. No, I have not.

14 Q. The document placed in front of you was  
01:55:29 15 previously marked as Exhibit 202.

16 Do you see that?

17 A. Yes.

18 Q. And after you've had a chance to look at that,  
19 please let me know.

01:56:47 20 A. Okay. I've read it.

21 Q. And have you seen this document before?

22 A. No, I have not.

23 Q. Prior to this litigation, were you ever aware  
24 of an agreement between Google and Intel not to  
01:57:07 25 cold-call into each other's companies?

1 A. No, I was not.

2 Q. Mr. Cook, the document placed in front of you  
3 should have the exhibit stamp Exhibit 667.

4 Do you see that?

01:57:38 5 A. Yes, I do.

6 Q. Take a moment to review this document, please.

7 A. Okay. I've read it.

8 Q. Okay. As indicated on the document, this  
9 comes from the Google files, and this, as reflected

01:58:26 10 here, involves a Google employee being recruited away  
11 to Facebook. And then Mr. Campbell is reaching out to  
12 some Google people about this issue.

13 Do you see that?

14 A. I guess Mr. Campbell asks who should reach out  
01:58:53 15 to Sheryl or Mark, is what I read.

16 Q. Yes.

17 And the "re" line is "Facebook poaching."

18 Do you see that?

19 A. Yes.

01:59:02 20 Q. Okay. Did you ever speak with Mr. Campbell  
21 about Facebook's recruiting activities?

22 A. No, I did not.

23 Q. Did you ever speak with anyone else at Intuit  
24 about Facebook's recruiting activities?

01:59:14 25 A. Not that I recall. I have shared some best



## REPORTER'S CERTIFICATE

I, Anne Torreano, Certified Shorthand Reporter licensed in the State of California, License No. 10520, hereby certify that the deponent was by me first duly sworn, and the foregoing testimony was reported by me and was thereafter transcribed with computer-aided transcription; that the foregoing is a full, complete, and true record of said proceedings.

I further certify that I am not of counsel or attorney for either or any of the parties in the foregoing proceeding and caption named or in any way interested in the outcome of the cause in said caption.

The dismantling, unsealing, or unbinding of the original transcript will render the reporter's certificates null and void.

In witness whereof, I have subscribed my name this 3rd day of April, 2013.

☒ Reading and Signing was requested.

☐ Reading and Signing was waived.

☐ Reading and Signing was not requested.

\_\_\_\_\_  
ANNE M. TORREANO, CSR No. 10520

# EXHIBIT O

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE ) C-11-02509 LHK  
ANTITRUST LITIGATION, )  
 ) SAN JOSE, CALIFORNIA  
 )  
 )  
 ) AUGUST 8, 2013  
THIS DOCUMENT RELATES TO: )  
ALL ACTIONS ) PAGES 1-161  
 )

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE LUCY H. KOH  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE PLAINTIFFS: JOSEPH SAVERI LAW FIRM  
BY: JOSEPH SAVERI  
LISA J. LEEBOVE  
JAMES G. DALLAL  
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LIEFF, CABRASER,  
HEIMANN & BERNSTEIN  
BY: KELLY M. DERMODY  
BRENDAN P. GLACKIN  
DEAN M. HARVEY  
ANNE B. SHAVER  
LISA J. CISNEROS  
275 BATTERY STREET, 30TH FLOOR  
SAN FRANCISCO, CALIFORNIA 94111

APPEARANCES CONTINUED ON NEXT PAGE

OFFICIAL COURT REPORTER: LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY  
TRANSCRIPT PRODUCED WITH COMPUTER

1 THE VARIOUS JOB TITLES FOR EACH OF THOSE.

2 MR. VAN NEST: 2400, YOUR HONOR --

3 MR. GLACKIN: 24 --

4 MR. VAN NEST: -- IS THE TOTAL.

5 THE COURT: NOW, LET ME ASK, WITH REGARD TO

6 MR. HARIHARAN -- DID I PRONOUNCE THAT CORRECTLY?

7 MR. GLACKIN: CORRECT.

8 THE COURT: OKAY. HE DID NOT WORK FOR A DEFENDANT  
9 WHO IS LEFT IN THIS CASE, SO WHY SHOULD HE STILL CONTINUE TO  
10 SERVE AS A CLASS REPRESENTATIVE?

11 MR. GLACKIN: WELL, AS MR. SAVERI SAID, YOUR HONOR,  
12 WE'RE ALLEGING A SINGLE VIOLATION OF THE SHERMAN ACT, A SINGLE  
13 CONSPIRACY, COMBINATION, AGREEMENT, UNDERSTANDING IN RESTRAINT  
14 OF TRADE.

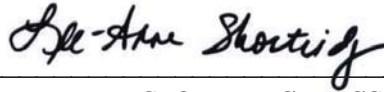
15 AND EVEN -- THE EMPLOYEES WHO WERE AT THE -- THE PEOPLE WHO  
16 WORKED FOR THE SETTLED COMPANIES DURING THE CLASS PERIOD STILL  
17 HAVE ACTIVE CLAIMS AGAINST THE OTHER MEMBERS OF THE CONSPIRACY  
18 BECAUSE, AS MR. SAVERI SAID, UNDER COPIOUS PRECEDENT, INCLUDING  
19 TEXAS VERSUS RADCLIFF, WHICH IS THE SIGNATURE UNITED STATES  
20 SUPREME COURT CASE ON JOINT AND SEVERAL LIABILITY, AND UNDER  
21 THE SHERMAN ACT, ALL OF THE MEMBERS OF THE COMBINATION  
22 CONSPIRACY UNDERSTANDING ARE LIABLE FOR ONE ANOTHER'S CONDUCT,  
23 OR WRONGDOING, I SHOULD SAY.

24 SO MR. HARIHARAN STILL HAS AN ACTIVE CLAIM AGAINST THE  
25 OTHER FOUR DEFENDANTS, JUST AS ALL THE OTHER NAMED CLASS

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.



LEE-ANNE SHORTRIDGE, CSR, CRR  
CERTIFICATE NUMBER 9595

DATED: AUGUST 19, 2013